387.

SUPREME COURT OF THE UNITED STATES.

No. 105.

E. G. ROGERS & CO. ET AL., OWNERS OF THE CARGO, AND POOLEY, NICOL & CO., OWNERS OF SCHOONER ELLA, APPELLANTS,

v.

THE STEAMER ST. CHARLES; JAMES L. DAY ET AL., CLAIMANTS, ETC.

APPEAL FROM THE CIRCUIT COURT UNITED STATES, EASTERN DISTRICT OF LOUISIANA.

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United States of America, Eastern District of Louisiana.

E. G. ROGERS & Co., and als., Owners of Cargo, and POOLEY, NICOL & Co., Owners of Schooner "Ella,"
v.
STEAMER ST. CHARLES, JAMES L. DAY and Others, Claimants.
No. 2383.

Pleas and proceedings before the hon. the Circuit Court of the United States for the Fifth Judicial Circuit and Eastern District of Louisiana, at the Nov. Term, 1854, of the said Court, held at the City of New Orleans, in the District aforesaid, on the 15th November, 1854.

Be it remembered, that heretofore, to wit, on the 28th day of October, A.D. 1854, came James L. Day and others, claimants of the Steamer "St. Charles," by their proctors, Messrs. Clarke and Bayne, and Pooley, Nichol & Co., owners of the Schooner "Ella," by their proctors, Messrs. J. A. Maybin and Thomas Hunton, into the Clerk's Office of the said Court, and filed a transcript of a record from the District Court of the United States for the Eastern District of Louisiana, which transcript is in the words and figures following, to wit:

Transcript.

U. S. District Court, Eastern District of L'a.

ROGERS & Co. et als., and HURLEY & Co. et als.,
v.
STEAMER ST. CHARLES.

Libel of E. G. Rogers & Co., and Brooks & Randolph. Filed 8th March, 1853.

To the Hon'ble Theodore McCaleb, Judge of the District Court of the United States in and for the Eastern District of Louisiana:

The libel and complaint of E. G. Rogers and L. F. Rogers, in the district aforesaid, merchants and co-partners, doing business under the name and style of E. G. Rogers & Co., and of J. R. Brooks and F. G. Randolph, merchants and co-partners, doing business in New Orleans under the name and style of Brooks and Randolph, against the Steamboat "St. Charles," whereof Reuben Post now is or lately was master, of her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of marine loss and collision, civil and maritime. And therefore the said E. G. and L. F. Rogers, and J. R. Brooks and F. G. Randolph, allege and articulately propound as follows:

First. That in the month of February, 1853, the Schooner "Ella,"

whereof Pooley, Nicol & Co., a commercial firm of New Orleans, were owners, and John Schernbeck was master, was lying in the "New Basin" of the New Orleans Canal and Banking Company, in this city, and was at that time a tight, stanch, and well-built vessel, of the burthen of eighty-two tons or thereabouts, and was completely rigged and sufficiently provided with tackle, apparel, and furniture, and then had on board six mariners or thereabouts, which was a full complement of hands to navigate the said Schooner "Ella" from the port of New Orleans to the port of Pensacola, in Florida, whence it was destined.

Second. That in the said month of February, about the third day thereof, the libellants, E. G. Rogers & Co., shipped on board the said Schooner "Ella," bound as aforesaid, sundry and various articles of merchandise, consigned and deliverable unto W. J. Keyser & Co., at Milton, in the State of Florida, they paying the freight thereon at the rate of 25 cents per barrel. That the said articles of merchandise are particularly mentioned in the bill of lading of the said Schooner "Ella," duly signed by the said John Schernbeck, master, and hereunto annexed as part of this libel, and marked A, and also in the invoices hereunto annexed as part of this libel, and marked B, C, and D. That the aggregate value of the said merchandise was three thousand three hundred and ten dollars, as is more particularly set forth in the Exhibits B, C, and D, above referred to.

Third. That, in the said month of February, about the day thereof, the said Brooks & Randolph shipped on board the Schooner "Ella" sundry and various articles of merchandise, consigned and deliverable unto A. J. L. & Co., and others, as set forth in bill of lading at the port of Warrington, they paying the freight thereon at the rate of — cents per barrel. That the said merchandise was fully and particularly detailed in the said bill of lading of the said Schooner "Ella," duly signed by J. Schernbeck, as part of the libel, and marked E, and also in the invoice hereunto annexed as part of this libel, and marked F. That the value of the said merchandise was eight hundred and thirty-six $\frac{35}{100}$ dollars, as is more particularly set forth in Exhibit F above referred to.

Fourth. That in the said month of February, about the 4th day thereof, the said schooner, provided and named as aforesaid, sailed from the "New Basin" in this city. That at two o'clock P.M. on the day of her departure, she arrived at the lake end of the new canal. That at six P.M. she got into the Lake Ponchartrain, and proceeded on her voyage, nothing particular occurring until the next day, the fifth February, when, at 6 P.M. she passed the Light Ship in "Pass Mary Ann," and came, about eight o'clock the same evening, to an anchor about ten miles distant from the "Light Ship;" that an anchor watch was set, a light put in the fore-rigging about eight feet above the rail, and every other precaution taken for the safety of the vessel. That about half-past eleven o'clock on the same night, the

Steamboat "St. Charles," being then in the command of the said Reuben Post, came towards the said schooner, being on a voyage from New Orleans to Mobile, and with a full head of steam on, and under full headway, ran into the said schooner, striking her in the larboard bow with so much violence and force as to cause the said schooner to sink, in about twenty minutes, in about sixteen feet water, barely giving the passengers and crew time to save their lives. That as the "St. Charles" approached the said schooner, the watchman who was on duty, seeing that a collision was inevitable, gave the alarm in so loud a tone as to arouse those who were below in the schooner, and caused them to rush upon deck.

Fifth. That the night of the 5th February (at the time of the collision aforesaid) was dark and rainy, and the steamer was running under a full head of steam. That the said schooner was lying at anchor in a safe and proper place, and had a light out as aforesaid, and had taken every precaution usual and necessary to protect her against all accidents and collision. And that the collision aforesaid was caused entirely by the fault, negligence, and want of skill in the officers of the Steamer "St. Charles," and in no wise by any fault or negligence on the part of the officers of the Schooner "Ella." That there was room enough for the "St. Charles" to have gone clear of the "Ella;" the schooner being at anchor as aforesaid, and could not get out of the way.

Sixth. That in consequence of the collision and sinking of the said Schooner "Ella" as aforesaid, all the goods and merchandise shipped on her by your libellant as aforesaid were utterly lost and destroyed; all of which is attributable entirely to the fault, negligence, bad management, and want of skill on the part of the master and crew of the "St. Charles," whereby your libellants have sustained loss and damage to the full value of the said goods and merchandise as aforesaid.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this hon'ble Court, and within the ebb and flow of the tide; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, the libellants pray that process in due form of law may issue against the said steamboat, her engine, machinery, boats, tackle, apparel, and furniture, and that this hon'ble Court will pronounce for the damages aforesaid, and decree the same to be paid with costs; and for such other and further relief and redress as to right and justice may appertain, and the Court is competent to give in the premises.

E. G. ROGERS & CO.,
pr. (Sig'd) E. G. ROGERS,
BROOKS & RANDOLPH,
pr. (Sig'd) F. G. RANDOLPH.

Personally appeared E. G. Rogers and F. G. Randolph, who, being duly sworn, declare that the allegations in the foregoing libel are true, so far as they are within the personal knowledge of affiants, and so far as stated upon the information of others they believe them to be true.

(Signed) JN. CLAIBORNE, [SEAL.]
U. S. Com'r.

Process dispensed with.

ROGERS & Co. et al., and
HURLEY & Co. et al.,
v.
U. S. STEAMER "ST. CHARLES."

Claim of R. Geddes et al. to Steamboat "St. Charles." Filed April 9th, 1853.

To the Honorable Theodore McCaleb, Judge of the District Court for the Eastern Dist. of Louisiana.

James L. Day, Abram Wolff, John Geddes, John Grant, Roger A. Heirn, and Robert Geddes, owners of the Steamer "St. Charles," her tackle, apparel, and furniture, appear before this honorable Court, and claim said Steamer "St. Charles," her tackle, apparel, and furniture, and state that they are the true and bona fide owners thereof, and that no other person is the owner thereof.

And thereupon the said claimants pray that this honorable Court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

(Signed) R. GEDDES,
Agent and Attorney in fact for Jas. L. Day, R. A. Hiern, John Geddes, Abram Wolff, and Jno. Grant.

R. Geddes, being duly sworn, declares that the facts set forth in the foregoing claim are true.

(Signed) R. GEDDES.

Sworn to, and subscribed before me, this 9th day of April, 1853.

(Signed) N. R. JENNINGS,
Clerk.

ROGERS & Co. et al., and
HURLEY & Co. et al.,
v.
U. S. STEAMER "ST. CHARLES."

Bond of $6,650 00 *to secure Libellants. Filed April 9th*, 1853.

(Rogers & Co. and Brooks & Randolph.)

United States District Court, Eastern District of Lou.

Know all men by these presents, that we, James L. Day, Abram Wolff, John Geddes, John Grant, Roger A. Hiern, and Robert Ged-

des, as principals, and Sophronious Twichell, as surety, are held and firmly bound unto E. G. Rogers and L. F. Rogers, libellants, in the sum of six thousand six hundred and fifty dollars, lawful money of the United States of America, to be paid to the said E. G. Rogers and L. F. Rogers, their executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this the ninth day of April, 1853.

Whereas a libel has been filed in the District Court of the United States for the Eastern District of Louisiana, at the suit of E. G. and L. F. Rogers, against the Steamer "St. Charles," in a certain action civil and maratime for $3,310, therein alleged to be due and owing to the said libellants.

The condition of this obligation is such that if the above bounden James L. Day, Abram Wolff, John Geddes, John Grant, Roger A. Heirn and Robert Geddes as principals, and Sophronius Twichell as surety, shall abide and answer the decree of the Court in such cause, then the above obligation to be void. Otherwise, to remain in full force and virtue.

(Signed) R. GEDDES,
Agent and Attorney in fact for Jas. L. Day, &c.

(Signed) SOPHRONIOUS TWICHELL.

Personally appeared S. Twichell, surety, who being sworn, says that he is worth the sum of $6,650 after all his debts are paid.

Sworn to before me this 9th day of April, 1853.

(Signed) N. R. JENNINGS,
Clerk.

Transcript.

ROGERS & Co. et al., and
HURLEY & Co. et al.,
v.
ST. "ST. CHARLES."

Answer of Claimants to libel of Rogers & Co., and Brooks and Randolph. Filed April 27th, 1853.

To the Honorable Theodore H. McCaleb, Judge of the United States District Court in and for the Eastern District of Louisiana.

The answer of James L. Day of Norwich, Connecticut; Abram Wolff, of Mobile, Alabama; John Geddes of Cincinnati, Ohio; John Grant of Pascagoula, Mississippi; Roger A. Hiern and Robert Geddes of New Orleans, in the State of Louisiana, intervening for their interest, and as owners of the Steamer "Charles," to the libel of E. G. and L. F. Rogers of New Orleans, trading under the style of E. G. Rogers & Co., and I. R. Brooks and T. G. Randolph of New

Orleans, merchants, trading under the style of Brooks and Randolph, answer and allege as follows.

First. That these respondents are ignorant of the matter contained in the first, second, and third articles of said libel, and as to the matter contained in the fourth, fifth, and sixth articles of said libel, they have no personal knowledge, but have understood and believe that the same are in great part falsely alleged, and that the truth is as hereafter alleged. Respondents do not admit that the matter contained in the articles first, second, and third of said libel, but deny the same.

Second. Respondents allege that the Steamer "St. Charles" being in good order, and well and sufficiently equipped and manned, left the Port of New Orleans on the 5th day of February, about five o'clock P. M. for the Port of Mobile, in the State of Alabama; that, pursuing her usual and regular course, she passed the "Light Ship" in Pass Marienne about 10½ P. M. in the evening of the same day—the night being dark, with an occasional light mist or rain, so that it was difficult and almost impossible to see a vessel without a light even at a short distance. That as said Steamer proceeded through Pass Marienne, and thence toward Mobile in her regular course, her officers discovered only a few feet ahead of said steamer the Schooner "Ella" lying at anchor; that by the impetus of said steamer already acquired, and the force of wind and tide, without any neglect, carelessness, or default of the master or crew of the Steamer "St. Charles," and notwithstanding every possible precaution, she was driven toward and in contact with the Schooner "Ella;" that the working of the engines of the Steamer "St. Charles" was stopped at the moment the schooner was discovered; that the collision was almost cotemporaneous with the discovery of said schooner, and could not possibly be avoided after said schooner was seen by said officers.

Third. That at the time mentioned, to wit, about eleven o'clock P. M. on the night of the 5th of February, said Schooner "Ella" was lying at anchor in Lake Borgne or Miss Sound, in the channel of said lake, about — miles distant from Cat Island, and eight or nine from the Light Ship in Pass Marienne, and had not a light in her rigging, on deck, or elsewhere, visible to those on board of the Steamer "St. Charles," and the said accident was occasioned by the negligence and want of care in the master, officers, and crew of the Schooner "Ella" in anchoring said schooner without a light in the channel of the lake, where steamers bound for Mobile must pass.

Fourth. That all and singular the premises are true.

Wherefore respondents pray that this honorable Court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

(Signed) CLARKE & BAYNE,
Proctors for Respondents.

Robert Geddes being duly sworn, says that so much of the above answer as is stated of his own knowledge, and the remainder he believes to be true.

(Signed) R. GEDDES.

Sworn to and subscribed before, this 27th of April, 1854.

(Signed) N. R. JENNINGS,
Clerk.

ROGERS & Co. et al., and
HURLEY & Co. et al.,
v.
STEAMER "ST. CHARLES."

Libel of J. Hurley & Co. and Pooley, Nicol & Co. Filed May 24th 1853.

To the Honorable Theodore McCaleb, Judge of the United States District Court for the Eastern District of Louisiana.

The libel and complaint of Thomas Sullivan trading under the name of John Hurley & Co., of the City of New Orleans, and Pooley, Nicol & Co., of the same City, against the Steamboat "St. Charles," of which Reuben Post now is, or lately was master, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein; and thereupon the said libellants propound as follows in a cause of collision.

First. That on the second day of the month of February, in the year 1853, the said Pooley, Nicol & Co., were the true and lawful owners of the Schooner "Ella," a tight, stanch, and well-built vessel, and completely rigged, and well provided, and under the charge of a competent master and crew, was at the Port of New Orleans, and destined on a voyage from that Port to the Port of Pensacola, in Florida, and on the said second day of said month of February, the said libellants shipped on board of said Schooner "Ella," certain goods, wares, and merchandise, to the value of one thousand five hundred and five dollars, eighty-seven cents ($1,505\frac{87}{100}$), more particularly described in the annexed bill, to be transported on board said schooner to Pensacola.

Second. That on the 4th day of the said month of February, the said schooner, manned and provided as aforesaid, with the said cargo on board, and with other cargo of great value, sailed from the said port of New Orleans, on her said voyage, and proceeded therein safely until about six o'clock, P.M., of the fifth day of said month, she came to anchor in Lake Ponchartrain, at Pass Marienne, about eight or ten miles distant from the "Light Ship," in said Lake;

that an anchor watch was set, a light put in the fore-rigging, about eight feet above the rail, and every other precaution taken for the safety of the vessel. That about half past eleven o'clock on the same night, the Steamboat "St. Charles," being then in the command of the said Reuben Post, came towards the said schooner, being on a voyage from New Orleans to Mobile; and with a full head of steam on and under full headway, ran into the said schooner, striking her on the larboard bow with so much violence and force, as to cause the said schooner to sink in about twenty minutes, in about sixteen feet water, barely giving the passengers time to save their lives. That as the St. Charles approached the said schooner, the watchman who was on duty, seeing that a collision was inevitable, gave the alarm in so loud a tone as to rouse those who were below in the schooner, and cause them to rush upon deck.

Third. That the night of the 5th February (at the time of the collision as aforesaid), was dark and rainy, and the steamer was running under a full head of steam; that the said schooner was lying at anchor in a safe and proper place, and had a light as aforesaid, and had taken every precaution usual and necessary to protect her against all accidents of collision; and that the collision aforesaid, was caused entirely by the fault, negligence, and want of skill in the officers of the Steamer "St. Charles," and in no wise by any fault or negligence on the part of the officers and crew of the Schooner "Ella;" that there was room enough for the "St. Charles" to have gone clear of the "Ella;" the schooner being at anchor as aforesaid and could not get out of the way.

Fourth. That in consequence of the collision, and sinking of the said Schooner "Ella," as aforesaid, all the goods and merchandise shipped on her by your libellants as aforesaid, were utterly lost and destroyed, all of which is attributable entirely to the fault, negligence, bad management, or want of skill of the master and crew of the said "St. Charles," whereby your libellants, John Hurley and Company, have sustained damage to the amount as aforesaid, of $1,505\frac{5}{100}$, and the said Pooley, Nicol & Co., the owners of the said schooner, sustained damage to the amount of three thousand four hundred and forty-five dollars (3,445), to wit: the amount of two thousand five hundred ($2,500), on account of damage to the said vessel, and nine hundred and forty-five dollars ($945), on account of demurrage for sixty-three days, whilst the said vessel was detained for making repairs of damages occasioned by said collision.

Fifth. That all and singular the premises are true, and within the admiralty jurisdiction of this honorable Court, and if denied will be verified.

Wherefore, the said libellants pray that the process of this honorable Court, according to the usage in Admiralty, may issue against the said *said* steamer, her tackle, apparel, and furniture, and that

this honorable Court will be pleased to pronounce for the damage aforesaid, and for general relief, &c., &c.

JOHN HURLEY & CO.,
POOLEY, NICOLL & CO.,
Libellants.

(Signed) HUNTON & BRADFORD,
Proctors.

It is hereby agreed, that this libel may be filed, and all exceptions to the form of the proceeding is waived; it is further agreed, that the owners of the said "St. Charles," may enter the usual bond in such cases without any actual seizure; that they may answer without affidavit; that all evidence taken, or which may hereafter be taken in the case of Rogers & Co. and others, against said Steamer "St. Charles," in the U. S. District Court, may be read as if taken in this cause.

(Signed) HUNTON & BRADFORD,
For Libellants.

(Signed) CLARKE & BAYNE,
For Complainants.

Transcript.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMBOAT "ST. CHARLES."

Claim in (6872) *of R. Geddes et al., to Steamboat "St. Charles." Filed May 24th*, 1853.

To the Honorable Theodore H. McCaleb, Judge of the District Court of the United States, for the Eastern District of Louisiana.

James L. Day, of Norwich, Connecticut; Abram Wolff, of Mobile, Alabama; John Geddes, of Cincinnati, Ohio; John Grant, of Pascagoula, Miss.; Roger A. Hiern, and Robert Geddes, of New Orleans, in the State of Louisiana, owners of the Steamboat "St. Charles," her tackle, apparel, and furniture, intervening for their interest in the Steamboat "St. Charles," her tackle, apparel, and furniture, appear before this honorable Court, and state that they are the true and bona fide owners thereof, and that no other person is the owner thereof. And thereupon, the said claimants pray, that this honorable Court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

(Signed) R. GEDDES,
For self, and as agent of all the other owners of the Steamboat "St. Charles."

Sworn, May 24th, 1854, before me,
(Signed) ROB'T. M. LUSHER,
D'y Cl'k.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMBOAT "ST. CHARLES."

Bond of $10,000 00 *to secure li'bt in* 6872. *Filed May 25th,* 1853.

Know all men by these presents, that we, James L. Day, Abram Wolff, John Grant, Roger A. Heirn, John Geddes, and Rob't Geddes, claimants and owners of the Steamboat "St. Charles," her tackle, apparel, &c., as principals, and Rob't Geddes, of New Orleans, as surety, are held and firmly bound unto John Hurley & Co., and Pooley, Nicol & Co., libellants, in the sum of ten thousand dollars, lawful money of the United States, for the payment whereof to the said John Hurley & Co., and Pooley, Nicol & Co., their heirs, executors, and administrators, firmly by these presents.

Witness, our respective names and seals, hereunto affixed by us, at New Orleans, this twenty-fourth day of May, A. D. 1853.

Whereas an Admiralty Warrant was lately issued out of the honorable the District Court of the United States, for the District of Louisiana, at the suit of John Hurley and Co., and Pooley, Nicol & Co., *v.* Steamer "St. Charles," her tackle, apparel, and furniture, and numbered 6872 on the docket of the said Court, commanding the Marshal to seize and take into his possession the Steamboat "St. Charles," which has been seized accordingly, but has been released from said seizure, and delivered to the claimants and the owners thereof, the said Robert Geddes, et als., having at the time, and by reason of the signing, sealing, and delivery of these presents, filed a claim to the said Steamboat "St. Charles," in the Clerk's Office of the said Court, and which claim is now of record.

Now, the condition of the above obligation is such, that if the said claimants and surety abide by all the orders, interlocutory or final, of the Court, and pay the said libellants the amount awarded by the final decree rendered in the Court to which the process is returnable, or in any Appellate Court, then the foregoing obligation to be void, but otherwise shall remain in full force and virtue.

(Signed) R. GEDDES, [SEAL.]
(Signed) R. GEDDES, [SEAL.]
Agent for the above-stated owners of Steamboat "St. Charles."

Signed, sealed and delivered, in the presence of
(Signed) J. P. WALDEN.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMBOAT "ST. CHARLES."

Answer of claim'ts to libel of Hurley & Co., et al. Filed May 25th, 1853.

To the Honorable Theodore H. McCaleb, Judge of the United States District Court, in and for the Eastern District of Louisiana.

The answer of James L. Day, of Norwich, Connecticut; Abram Wolff, of Mobile, Alabama; John Geddes, of Cincinnati, Ohio; John Grant, of Pascagoula, Miss.; Roger A. Hiern, and Robert Geddes, of New Orleans, in the State of Louisiana, intervening for their interest and as owners of the Steamboat "St. Charles," to the libel of John Hurley & Co., and Pooley, Nicol & Co., merchants, trading under said names and styles in New Orleans.

First. That these respondents are ignorant of the matter contained in the first article of said libel, and do not admit the same to be true; that as to the matters contained in the second, third, fourth, and fifth articles of said libel, they have no personal knowledge, but have understood and believe, that the same are in great part falsely alleged. Respondents do not admit that the matter contained in said articles of said libel are true, but deny the same.

Second. Respondents allege, that the Steamboat "St. Charles," being in good order, and well and sufficiently equipped and manned, left the Port of New Orleans on the 5th day of February, about 5 o'clock P. M., for the Port of Mobile, in the State of Alabama; that pursuing her usual and regular course, she passed the Light Ship in Pass Marienne, about 10½ o'clock, in the evening of the same day, the night being dark, with an occasional light mist or rain; that it was impossible to see a vessel without a light, even at a distance from said steamer; that as said steamer proceeded through Pass Marienne and thence toward Mobile in her regular course, her officers first discovered (only a few feet ahead of said steamer, directly in her path), the Schooner "Ella," lying at anchor; that by the impetus already acquired, and the force of wind and tide, without any neglect, carelessness, or default of the master and crew of the Steamer "St. Charles," and notwithstanding every possible precaution, she was driven toward and into contact with the Schooner "Ella;" that the working of the engines of the Steamer "St. Charles" was *was* stopped at the moment the schooner was discovered, or could possibly have been discovered; that the collision occurred almost at the same instant that the "Ella" was discovered, or could have been discovered; that it could not possibly be avoided after said schooner was seen by the officers and crew of the "St. Charles," or after it could have been seen with the exercise of all diligence and care.

Third. That at the time mentioned, to wit, about eleven o'clock P. M., on the night of the 5th of February, 1853, said Schooner "Ella" was lying at anchor in Lake Borgne or Mississippi Sound, in the channel of said lake, in the path of steamers going from New Orleans to Mobile, about eight or nine miles distant from the Light Ship in Pass Marienne; that said schooner had no light in her rigging, on deck, or elsewhere, visible to those on board of the Steamer "St. Charles," or to any person whatever, nor had there been any light on said schooner that could be seen by the officers or crew of the Steamer "St. Charles," notwithstanding their care and watchfulness; that said accident was occasioned by the negligence and want of care in the master, crew, and officers of the Schooner "Ella," in anchoring said schooner without a light, in the channel of the lake where steamers bound for the Port of Mobile from New Orleans must pass.

Fourth. That all and singular the premises are true. Wherefore, respondents pray, that this honorable Court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

(Signed) CLARK & BAYNE,
Proctors for Respondents.

Affidavit waived as per agreement filed with libel.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMBOAT "ST. CHARLES."

Amended and Supplemental Libel of Pooley, Nicol & Co. Filed (by leave of Court), April 26th, 1854.

And now, come the said libellants, reiterating the allegations of the said libel, do allege that the damages done to the Schooner "Ella" by the Steamboat "St. Charles," and which was caused by the collision aforesaid, through the fault and negligence of the persons having the charge and management of said Steamboat "St. Charles," amounts to four thousand dollars, exclusive of demurrage and expenses, as set forth in the original libel filed herein.

Wherefore the libellants pray that this honorable Court will pronounce and decree in favor of libellants for the said sum of four thousand dollars, for damages to the said schooner "Ella," together with the demurrage expenses and other damages sustained by libellants, as set forth in their original libel, and they pray for such relief as they are entitled to as agents.

(Signed) J. A. MAYBIN,
(Signed) THOMAS HUNTON,
Proctors for Libellants.

Transcript. (From the Minutes.) 1853, May Term. Proceedings. Stated Sessions. Tuesday, May 31st, 1853. The Court met at 10 A. M. Present, Hon. T. H. McCaleb. In Admiralty.

Partial Hearing and Continuance.

E. G. Rogers & Co.,
and Brooks & Randolph,
v.
Steamboat "St. Charles." } 6852.

This cause came regularly up for hearing, C. B. Singleton, Esq., appearing for the libellants, and Messrs. Clarke and Bayne for the claimants. The pleadings having been read, and a small diagram, marked A, submitted to the Court, the depositions of John Schernbeck, Richard Roche, C. Sarrazin, James Proctor, Henry Kahers, Charles Brown, Francis Boyd, James Harrison, and John Schernbeck were read in evidence for the libellants, and a protest ("Schooner Ella"), seven invoices and two account sales offered for the same, and the depositions of 1st, G. W. Walker, Wm. Allen, Geo. T. Jones, and John Hannebery; 2d, Reuben Post; and 3d, of A. Tyson, read in evidence for the claimants, when the further hearing of the case was continued till Friday, the 3d inst., at 10 A. M.

John Hurley & Co.,
and Pooley, Nichol & Co.,
v.
Steamboat "St. Charles." } 6872.

This cause having been consolidated with the foregoing, and being also about to be tried, at special request of J. E. Maybin, Esq., of counsel for certain parties in interest, it is ordered by the Court, that it be continued till Friday, the 3d inst.

Transcript. (From the Minutes.) 1853, May Term. Stated Sessions. Saturday, June 4th, 1853. The Court met at 10 A. M. Present, Hon. T. H. McCaleb. In Admiralty.

Hearing and Submission.

Rogers & Co. et al.,
and Hurley & Co. et al.,
v.
The Steamboat "St. Charles." } 6852. 6872.

The hearing of the issue in these causes was resumed, T. R. Wolffe, Thos. Hunton, and J. E. Maybin, Esquires, appearing for the libellants, and T. L. Bayne, Esq., for the claimants.

The deposition of John H. Smith, Esqr., was read in evidence for the claimants; when Mr. Maybin, being allowed till Wednesday, the 8th instant, to produce the testimony of a material witness, the evidence was closed. After argument by T. R. Wolffe, Esq., for libellants, T. L. Bayne, Esq., for claimants, and Thos. Hunton and J. A. Maybin, Esq., for the libellants, the Court took the case under advisement.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The Steamer "ST. CHARLES."

Protest. Schooner "Ella." Feb'y 24th, 1853.

Offered in evidence for libellants, and filed May 31st, 1853.

United States of America. State of Louisiana. City of New Orleans.

By this public instrument of protest, be it known, that on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States of America the seventy-seventh, before me, George Rareshide, a Notary Public, in and for the Parish of Orleans, dwelling in the City of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared J. Schernbeck, master of Schooner "Ella," and also Henry Kahrs, mate, Francis Boyd, George Johnson, Charles Brown, and Charles Anderson, seamen, all belonging to the Schooner "Ella," also, John Schernbeck, master of said schooner, which said appearers, after having been duly sworn by me, the said Notary, upon the Holy Evangelists of Almighty God, voluntarily, freely, and solemnly declare and depose as follows, to wit, that on the fourth day of the present month of February, they left the New Basin, in this City, on board said schooner, bound for the port of Pensacola, State of Florida, with a cargo of assorted merchandise; that when they started, as aforesaid, the said schooner was stout, stanch, and strong; that her cargo was well and sufficiently stowed and secured; was well manned, tackled, victualled, apparelled, and was in every respect fit for sea, and the voyage she was about to undertake; that at 2 P. M., on the day of their departure, they arrived at the lake end of the new canal; at 6 o'clock P. M., they got out into the lake, and proceeded on their voyage, nothing particular occurring until the following day, the fifth, when, at 6 o'clock, P. M., the weather being thick and rainy, they passed the Light Ship in Pass Mary Ann; that at eight o'clock P. M., the weather being still very thick and rainy, they came to anchor, as they supposed, about ten miles distant from the Light Ship, and bearing by the

compass southwest by south; that an anchor watch was set, a light put in the fore-rigging, about eight feet above the rail, and every other precaution taken for the safety of the vessel; that about half past eleven o'clock that night, the watchman on duty perceived the Steamboat St. Charles coming towards them under full headway; that he instantly gave the alarm, and in so loud a tone as to alarm the crew, who rushed on deck, at which moment the "St. Charles" ran into their larboard bow with so much force as to cause the schooner to sink in less than twenty minutes, in about sixteen feet water, barely giving the crew and passengers sufficient time to save their lives; that they then got on board the steamer, and proceeded to Mobile, where they arrived on Sunday morning; that the said master then procured the necessary assistance, and immediately returned to the wreck, and after considerable exertion succeeded in raising the wreck, and bringing her into this port, where they arrived on the nineteenth day of the present month of February, on which day the said master came before me, the undersigned Notary, and noted his protest in due form of law.

Now, therefore, because of the premises, and as all the loss, damage, and injury which already have, or may hereafter appear to have happened or accrued to the said schooner or her said cargo, has been occasioned solely by the circumstances hereinbefore stated, and cannot, nor ought not to be attributed to any insufficiency of the said schooner, or default of him, the said master, his officers or crew, he now requires me, the said Notary, to make his protest, and this public act thereof, that the same may serve and be and remain in full force and virtue, as of right shall appertain. And thereupon the said master doth protest, and I, the said Notary, at his special interest and request, do by these presents publicly and solemnly protest against wind, weather, steamboat running into, the dangers and perils of the lake navigation in general, and against all and every accident, matter and thing had and met with as aforesaid, whereby, or by means whereof, the said schooner or her cargo already has, or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages, and injury which the said master or the owner or owners of the said schooner, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either already, have, or may hereafter pay, sustain, incur, or be put unto by, through, or on account of the premises, or for which the insurer or insurers of the said schooner, or her cargo, is or are respectively liable to pay or make contribution or average, according to custom, or their respective contracts or obligations, so that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall upon him, the said master, or upon any of his officers or crew. Thus done and protested at my office, in the City of New Orleans, this twenty-fourth day of February, in the year of our Lord one thousand eight hun-

dred and fifty-three, in the presence of Wm. Monaghan and James Wood Breeadlove, both of this City, competent witnesses, who hereunto sign their names, together with the said appearers, and me, said notary.

Original, Signed
WM. MONAGHAN,
J. WOOD BREEDLOVE.

JOHN SCHERNBECK,
HENRY HAHRS,
FRANCIS [his X mark], BOYD,
GEORGE [his X mark] JOHNSON,
CHARLES [his X mark], BROWN,
CHA'S [his X mark], ANDERSON.

G. RARESHIDE,
Notary Public.

[SEAL.] A true copy of the original act.

NEW ORLEANS, Feb. 25, 1853.

(Signed) G. RARESHIDE,
Notary Public.

ROGERS & Co. et al., and
HURLEY & Co.,
v.
The STEAMBOAT "ST. CHARLES."

Depositions of Jno. Schernbeck, Richard Roche, C. Sarrazin, Jas. Proctor, Henry Kahrs, Cha's Brown, Francis Boyd, Jas. Harrison, and Jno. Schernbeck (recalled) for Libellants.

Offered and read in evidence for libellants, and filed May 31st, 1853.

Testimony taken by consent of parties to be read in evidence on the trial of the above entitled suit.

John Schernbeck: I commanded the Schooner "Ella" at the time of the collision between her and the "St. Charles," on the 5th of February, 1853. I left the New Basin, on Friday morning, the 4th, about 9 o'clock; I was at anchor at the time of the collision; I was lying about ten miles to the east of the Pass Marienne Light Ship. The collision occurred at night; I came to anchor that night about 8 o'clock; I came to anchor because it was so thick; I could not see, and because there was a head wind and a heavy swell coming in from outside. The collision occurred about 20 minutes before 12 o'clock at night, by my time; I looked at my clock when I went down to get my coat; I do not know exactly what the steamboats call their path from Mobile to New Orleans; they may call the whole lake their path for what I know; I know the path they generally pursue, or what I consider to be the path for them; I was not anchored in that path, but judge I was two or three miles to the southward of it. I had gone through Pass Marienne, which is about 3 or 4 miles in length, to clear all shoals from the Light Ship, and

was lying in the lake where there was sea-room of 6 or 7 miles north and south. There was plenty of water and room for the "St. Charles" to have gone on either side or the other; I saw nothing of this collision before it happened; I was in my bed asleep; I went to bed at 9 o'clock; left orders to my mate to set his watch, and hang the light out, and to keep it in good order, and after his watch was out, to tell the rest of the men to do the same. The light was a globe lamp, such a lamp as I usually use; I have had it on board 5 years, and have always used it for this purpose. The first I heard of the collision, was a noise on deck, and the steamboat striking the schooner. She struck the schooner on larboard bow, between the cat-head and forerigging; she sunk in about 20 minutes; I had time to lower the boat and get my passengers in, and shove off, when I saw her go down. She sank in 14 or 15 feet of water; I hung on to my boat tackle until she careened; I then told them to shove off towards the steamer, where they hollowing for me to hurry on, that they could not wait all night; I went with the steamer to Mobile; I there engaged a schooner to go back with me to the wreck, to save all that I could. I succeeded in saving molasses, and flour, and tobacco, and some other things which were brought to New Orleans. All that I saved was more or less damaged, according to the nature of the article. I raised the schooner and brought her to the New Basin. She was 8 or 10 days before we got the water out of her, so that she could float herself without assistance. Part of the hold cargo was got out; about 100 bbls of bread and some corn, flour, and molasses. The crew contained six men, all told; this was more than a full complement; on account of our short trip, we had to handle our freight frequently, and found it cheaper to employ more men than to hire labor at each place.

The "Ella" was a large, substantial vessel, rebuilt at Pensacola, in August last, at an expense of $3,000. (All her upper works were raised, all new stancheons fore and aft, new transit, a new stern, and newly coppered.)

The night seemed dark when I came out of my bed. When I first came out, my attention was not drawn towards the weather. I was anxious about getting my passengers on board, but when I had got them all on board, and had come to myself on the steamer, I did not think the night so very dark. It was about one-half or three-quarters of an hour after the collision, that I formed this opinion about the darkness of the night; it was not raining when I was on board the steamer. While I was in my boat going to the steamer, there was a little drizzling, but I can't say whether it was rain or spray. The wind as far as I can say was north-northwest, blowing fresh. The course of the steamer, as far as I can tell, was northeast by east. The "Ella" was 82 tons; she was on her way from New Orleans to Pensacola, with a full assorted cargo. When I came up from below, at the time of the collision, I saw a light on the Schooner

"Ella;" it was then standing on the top of the cook-house; it was the globe light I have before spoken of. I have been navigating the coast from New Orleans to Pensacola, by way of the lakes, 14 or 15 years. I have been in command of a vessel on the lakes since 1838. It has always been my practice, since in command of the "Ella," when lying at anchor, on a dark night, to have this lamp out. I have been in command of the "Ella," nearly 5 years. I have never experienced an accident like the present, since I have commanded the "Ella." I had some conversation with the captain of the Steamer "St. Charles," on board the steamer, about the light of the schooner. I told the captain that I was asleep at the time the steamer run into us, but that one of my men told me he had cleaned the lamp as I had directed him. I also told the captain, that Mr. Swan stated in a joking way, that if the vessel met with any more accidents, the Company would have to cross her. I do not consider that the "St. Charles" was in her proper place at the time of the collision. She ought to have been at least 3 miles to the northward of me.

Cross-examination.

I have never been engaged in any steamboat running between here and Mobile. The course of a steamboat from here to Mobile, is as follows: from the railroad, which is the 1st point to Point Reserve; the course is N. E.; then 3 or 4 miles E. S. E., to around the middle grounds; then N. E. for the Riggolets, is S. E. by E. ½ E., next reach N. E., by E. ½ E. to the light-house; then E. S. E. to Long Point, then E. N. E. ½ E. to St. Joseph's Island; from St. Joseph to Pass Marienne, N. E. by E. up to the Moro Keys; from there to the light-ship, E. N. E.; from the light-ship, to clear the Pass, N. E. ½ E.; steamboats then sometimes shear E. N. E. awhile, and then haul more to the eastward. Others make a more direct course; I judge so from having seen them do so at various times. After coming out from the shoals at Pass Marienne, the course depends to some extent upon the wind and weather. My knowledge of the course of steamboats, as above described, is derived from the fact, that sailing vessels take nearly the same course as steamboats, except that steamboats can go direct, and sailing vessels cannot, being obliged to tack and court the wind. The width of Pass Marienne varies; at the narrowest places, it is about ¼ of a mile; the nearest place is near the light-ship. The entrances at both ends are about ½ a mile wide. The light-ship is rather west of midway. The light-ship is about 5 miles distant from the eastern entrance, that is clear of all shoals. I saw the light standing in the cook-house when I came up. Three of my men had already left the vessel and got on the "St. Charles;" effect of such a night as has been described in the glass of the lamp, would be to render it damp and dim; the light being inside and the cold air out, it caused the moisture to be settled in the glass, and dim it,

or make it lose its shine. The globe of the lamp was, about six or seven inches in diameter.

The witness being asked whether he did not state to some of the officers of the "St. Charles," that he supposed his men were wiping the glass the moment before the collision, answers that he told the captain, that so far as he had learned from his men, they had cleaned the lamp according to his instructions to them.

I mean by saying, that Pass Marienne, at the narrowest place, is ¼ mile wide, that the navigable part of it is about that width. The eastern entrance of Pass Marienne (heretofore referred to), is about ½ mile wide, and about 5 miles beyond the light-ship. When I first came up after the collision, I saw none of my men except one, who came forward from aft. The collision occurred about 4 or 5 miles from the eastern entrance of Pass Marienne.

In speaking of his knowledge of the track of a steamboat, he refers to the general course, as learned by comparing the course of sailing vessels with steamboats, and not to a more particular knowledge. He thinks that his knowledge is such as to enable him to pilot a boat from New Orleans to Mobile.

Re-examination.

When I say that the dampness took the shine of the lamp, I mean merely that it rendered it lest distinct than when the weather is dry. I stated nothing else to the captain, or to any other person on the "St. Charles," about the light, than what I have already stated above.

(Signed) JOHN SCHERNBECK.

Re-examination.

The schooner, as far as I can judge, was worth about what she was insured for. My passengers were Mr. Hugh and lady, and two black servant slaves belonging to Mr. Fareintelle.

(Signed) JOHN SCHERNBECK.

Sworn to and subscribed before me this 1st March, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

Richard Roche. I command the Schooner Caledonia. I have commanded her six or eight months. Prior to this I commanded another vessel. I have been a master of several vessels four or five years. I have commanded a vessel on the lakes where the accident happened four or five years. At the time of the collision between the St. Bt. "St. Charles" and the "Ella" I was in command of the "Caledonia" lying at anchor about five or six hundred yards from the place of the collision. The night was neither clear nor cloudy,

but it was rather dark. It was not so dark but that anybody knowing anything about sailing might find their way through the Lake. I could see the light of the "Ella," and could see all the lights for eight or ten miles round that night between ten and twelve o'clock. I saw the light of the "Ella" later than ten o'clock. I cannot say how much later than ten o'clock I saw the light of the "Ella," but I saw it in less than an hour before the collision; but cannot say what hour that was. I cannot tell in what position the light of the "Ella" was placed on board, but the steamer had as good a chance to see it as I had. When I saw the light it was as clear as lights generally are under such circumstances. The light must have been a globe-lamp, as she could not have shown a light on deck unless it was in a globe. I did not see the collision, I was below at the time, but I heard the steamer go by. I was lying to the westward of the "Ella." The steamer had passed me before the collision. I cannot tell how near the steamer passed to me. She could not have been very far off. I did not hear the collision. The witness being asked whether the "Ella" was lying at the time in the usual track of sailing vessels from New Orleans to Mobile or Pensacola, answers: If they steered a straight course from the Light Ship she was not. A sailing vessel coming out of Pass Marienne on her way to Mobile, if she had head wind could make her tack all over the lake wherever there is water without confining herself to any particular course. The "Ella" was between one and two miles distant from the track of a vessel going out of Pass Marienne on a most direct and usual course to Mobile with a fair wind. I am familiar with the course which this line of steamers runs from New Orleans to Mobile, having been on the lake some six or eight years. The steamer was not prevented by the wind that night from taking any course she might choose. If the steamer, after leaving the mouth of Pass Marienne, had pursued the most usual and direct course to Mobile, she would have passed from one to two miles from where the "Ella" was lying, the same as sailing vessels. I have known the captain of the "Ella" about two years. The collision happened about three or four miles to the eastward of the Pass, I mean the shoal on the south side of the Pass. I did not see the steamer again that night after the collision. I saw the schooner next morning between daybreak and sunrise. She was on her beam ends, on the bottom; the water was between two and a half and three fathoms deep at that place.

Cross-examination.

I have been engaged for the last three or four years in running from New Orleans to Biloxi and to the coast of Texas and Florida. I do not remember whether I have been in any other trade during that time or not. I have never been engaged in running on any of the steamers between Mobile and New Orleans. I do not know whether the steamers running between New Orleans and Mobile

pursue a regular, fixed, and definite course or not. I cannot describe the exact and usual course of steamers from New Orleans to Mobile. Never was engaged on a steamer, therefore I cannot say whether they vary their course on the lakes on account of wind and tide or not. On the night of the collision I went to bed between ten and twelve o'clock. It is not usual for captains to stand watch on their own vessels when they have men enough. I went to bed long before ten o'clock, but was getting up every half hour or so. I was at anchor. In coming out of the eastern mouth of Pass Marienne steamers can steer a straight course from the Light Ship. I think it rained that night. Can't say between what hours. Can't say what was the state of the weather at ten o'clock. I saw several lights that night on the lake from where I was anchored, some of which were lights of vessels and some were not. I was at anchor long before the "Ella" came up, and did not hail her. I had no conversation with her captain. The "Ella" came to anchor about sundown. I knew the "Ella" when she came up. I have known her for four or five years. I think I read her name, but am not certain. My attention was called more particularly to the light of the "Ella" than to the other lights by the circumstances that she was almost in a direct line with me to the eastward, and as the wind at the time was blowing hard from the southward and eastward, and as I expected a norther to come up. After the norther came out, I took the bearings of the "Ella" to see if any vessel had dragged her anchor; I can't say the exact hour when I took the bearings, but looked at the compass several times. The witness being asked how he knows what is the usual course of steamers on the lake says, that he knows it from meeting, seeing them, and getting out of their way when I wish to go to anchor. I never pretend to get out of their way when sailing.

Re-examination.

There was as much water in the direct course of the steamer as above described as where the "Ella" was lying, and plenty of water for six or eight miles to the northward of the usual track. That is, there was sufficient for the steamer.

Cross-examination resumed.

Can't say exactly how far the "Ella" was distant from the Light Ship; but I think about eight miles more or less. Can't say how far from the Light Ship the shoals of the eastern mouth of Pass Marienne are distant. I suppose about four or five miles more or less. Can't say how wide Pass Marienne is; it varies from half a mile to one and a half miles. The channel I can't answer in reference to. The Pass is the channel. The navigable channel is exactly equal in extent to the Pass. The whole breadth of the water over which I can sail my vessel in going through the Pass is from

one-half to one and a half miles. My schooner I think draws more water than the steamer.

Re-examination resumed.

I consider the channel and the pass as one and the same, and this is what I mean to convey in my preceding examination resumed.

(Signed) RICHARD ROCHE.

Sworn to and subscribed before me, this 28th February, 1853.

(Signed) J. RICHARDSON,
3d J. P.

C. Sarrazin. I command the schooner Zuline. I have been a master six years, and have commanded the Zuline three years. I have been navigating the lakes between New Orleans and Mobile in command of a vessel, for six years. When the collision occurred between the "Ella" and the "St. Charles," my vessel was at anchor about from one-half to two miles distant from them. I anchored at that place about sundown. The "Ella" came there before me about ten or fifteen minutes. She anchored. I remained there all night. I had a light on board, on the peak halliards. Can't say exactly whether the night was clear or cloudy, as I went down between eight and nine o'clock, and did not come up until morning. It was very clear when I went down. I could not see the "Ella" when I went below, but saw her light. The light was at that time very clear. It was as clear as the lights of other vessels. The "Caledonia" was lying near, and I saw some others at a distance. I did not see or hear anything of the accident, as I was asleep. I was to the northward of the "Ella." The Ella was lying at anchor in the usual and proper course of sailing vessels going from New Orleans to Mobile and Pensacola. I know the captain of the "Ella" slightly. The "Ella" was lying from a mile to a mile and a half from the usual course of the steamer from New Orleans to Mobile. I have frequently seen the steamer pass that place. I know their track, from having seen them pass frequently.

Cross-examination.

My position was directly north of the "Ella." The Caledonia's position was west of the "Ella." Never have been engaged on a steamboat. I think that steamboats always run in exactly the same track. I can't describe the course of a steamboat from New Orleans to Mobile. I derive my knowledge of the course of a steamboat to Mobile from seeing them passing, and from the course of a sailing vessel. The track going out of the pass towards Mobile is northeast from the Light Ship, and continues in that course about four or five miles. After that, the course is E. N. E. to Grant's Pass. The lake varies in depth on account of the winds and tide, or not. I

cannot say whether the steamers changed their course on account of variations in the depth of water or not. Have no experience on steamers.

Examination resumed.

There is a difference in the depth of the water of the lake, but can't say whether it is caused by the winds and tides or not.

(Signed) C. SARRAZIN.

Sworn to and subscribed before me, this 28th February, 1853.

(Signed) J. RICHARDSON,
3d J. P.

James Proctor. I am a seaman on board the schooner "Caledonia," who was yesterday examined. I was on board the "Caledonia" at the time of the collision between the "Ella" and the Steamboat "St. Charles. Our vessel was bound to Appalachicola, from New Orleans. We were lying about a quarter of a mile to the westward of the "Ella" that night. He had been at anchor some thirty hours. The "Ella" was also at anchor at the time of the collision. Our schooner was lying in Lake Borghe, under Cat Island. Can't say how near we were to the Cat Island shore, but think we were about a mile or two off. As near as I can tell, our position was about the middle of the island. I have been sailing on the lakes continually as a seaman since 1846, and also for some years previously to that date, but with some interruptions. I was on board the Steamer "Caroline" as a deck-hand, with Capt. Sutton, running between New Orleans and Mobile, I think, in 1837 or 1838. I served on her five months. I have never been employed on any other steamer between New Orleans and Mobile, but have several times gone across as a passenger in the steamer. The "Ella" came to anchor close on to dark that evening. It was a kind of drizzly night, and the wind was southward and eastward when she came to an anchor. I can't say whether the "Ella" was anchored in a proper position for vessels going from New Orleans to Pensacola, or not. I was on deck at the time of the collision. It occurred about half past 11 o'clock. We had a light on board our vessel at the time; I saw the light on board the "Ella" at 11 o'clock. I also saw it at 10 o'clock, when the mate called me to keep watch. I saw it several times between 10 and 11 o'clock. I could not see the light of the "Ella" without getting up on our deck-load, unless I was aft. I did not see her light after 11 o'clock, because I was not aft, nor did I get on the deck-load after that hour. At the time of the collision, the night was not clear, nor was it thick—it could not be called a dark night. It was not so dark but that, if there had been a lookout on board the "St. Charles," they could have seen the Ella or any other vessel, at the distance of 150 yards. The light I saw on board the Ella at 11 o'clock, was the usual light of sailing vessels; not an extra light, but such a light as

one-half to one and a half miles. My schooner I think draws more water than the steamer.

Re-examination resumed.

I consider the channel and the pass as one and the same, and this is what I mean to convey in my preceding examination resumed.

(Signed) RICHARD ROCHE.

Sworn to and subscribed before me, this 28th February, 1853.

(Signed) J. RICHARDSON,
3d J. P.

C. Sarrazin. I command the schooner Zuline. I have been a master six years, and have commanded the Zuline three years. I have been navigating the lakes between New Orleans and Mobile in command of a vessel, for six years. When the collision occurred between the "Ella" and the "St. Charles," my vessel was at anchor about from one-half to two miles distant from them. I anchored at that place about sundown. The "Ella" came there before me about ten or fifteen minutes. She anchored. I remained there all night. I had a light on board, on the peak halliards. Can't say exactly whether the night was clear or cloudy, as I went down between eight and nine o'clock, and did not come up until morning. It was very clear when I went down. I could not see the "Ella" when I went below, but saw her light. The light was at that time very clear. It was as clear as the lights of other vessels. The "Caledonia" was lying near, and I saw some others at a distance. I did not see or hear anything of the accident, as I was asleep. I was to the northward of the "Ella." The Ella was lying at anchor in the usual and proper course of sailing vessels going from New Orleans to Mobile and Pensacola. I know the captain of the "Ella" slightly. The "Ella" was lying from a mile to a mile and a half from the usual course of the steamer from New Orleans to Mobile. I have frequently seen the steamer pass that place. I know their track, from having seen them pass frequently.

Cross-examination.

My position was directly north of the "Ella." The Caledonia's position was west of the "Ella." Never have been engaged on a steamboat. I think that steamboats always run in exactly the same track. I can't describe the course of a steamboat from New Orleans to Mobile. I derive my knowledge of the course of a steamboat to Mobile from seeing them passing, and from the course of a sailing vessel. The track going out of the pass towards Mobile is northeast from the Light Ship, and continues in that course about four or five miles. After that, the course is E. N. E. to Grant's Pass. The lake varies in depth on account of the winds and tide, or not. I

cannot say whether the steamers changed their course on account of variations in the depth of water or not. Have no experience on steamers.

Examination resumed.

There is a difference in the depth of the water of the lake, but can't say whether it is caused by the winds and tides or not.

(Signed) C. SARRAZIN.

Sworn to and subscribed before me, this 28th February, 1853.

(Signed) J. RICHARDSON,
3d J. P.

James Proctor. I am a seaman on board the schooner "Caledonia," who was yesterday examined. I was on board the "Caledonia" at the time of the collision between the "Ella" and the Steamboat "St. Charles. Our vessel was bound to Appalachicola, from New Orleans. We were lying about a quarter of a mile to the westward of the "Ella" that night. He had been at anchor some thirty hours. The "Ella" was also at anchor at the time of the collision. Our schooner was lying in Lake Borghe, under Cat Island. Can't say how near we were to the Cat Island shore, but think we were about a mile or two off. As near as I can tell, our position was about the middle of the island. I have been sailing on the lakes continually as a seaman since 1846, and also for some years previously to that date, but with some interruptions. I was on board the Steamer "Caroline" as a deck-hand, with Capt. Sutton, running between New Orleans and Mobile, I think, in 1837 or 1838. I served on her five months. I have never been employed on any other steamer between New Orleans and Mobile, but have several times gone across as a passenger in the steamer. The "Ella" came to anchor close on to dark that evening. It was a kind of drizzly night, and the wind was southward and eastward when she came to an anchor. I can't say whether the "Ella" was anchored in a proper position for vessels going from New Orleans to Pensacola, or not. I was on deck at the time of the collision. It occurred about half past 11 o'clock. We had a light on board our vessel at the time; I saw the light on board the "Ella" at 11 o'clock. I also saw it at 10 o'clock, when the mate called me to keep watch. I saw it several times between 10 and 11 o'clock. I could not see the light of the "Ella" without getting up on our deck-load, unless I was aft. I did not see her light after 11 o'clock, because I was not aft, nor did I get on the deck-load after that hour. At the time of the collision, the night was not clear, nor was it thick—it could not be called a dark night. It was not so dark but that, if there had been a lookout on board the "St. Charles," they could have seen the Ella or any other vessel, at the distance of 150 yards. The light I saw on board the Ella at 11 o'clock, was the usual light of sailing vessels; not an extra light, but such a light as

I have commonly seen used on board such vessels,—it must have been a globe lamp. At the time of the collision I was standing aft. I saw the steamer before the accident. From the time she passed the "Caledonia," until she struck the "Ella," it could not have been more than 15 minutes, I think. As soon as the "St. Charles" had passed the "Caledonia," the mate called to me to turn the light fresh, and while I was hanging the light up again, I heard the "St. Charles" backing. The steamer could not have passed us at a distance of more than 10 yards—she was so near that I could read her name, and see most everybody on her lower deck. I did not hear the collision; we could not hear it in our position, owing to the way the wind was blowing. I knew nothing of the accident until next morning. We got under way about six or seven in the morning after the collision. I do not know the tonnage of the "Caledonia," but I think she registers from 80 to 90 tons. She is not, I think, as large as the "Ella." On Friday night, the mail boat passed us, bound to Mobile, about a quarter of a mile distant; that was the night previous to the collision. I think it was the "Florida." We were lying at anchor at the time in the same place. It was about 11 o'clock when she passed us.

Cross-examination.

I have always been employed before the mast. When on the steamer "Caroline," I was a deck-hand. My time for watch on the "Caledonia" was from ten till one, the night of the collision and the night before. We were not near enough to see any person on the "Ella" after dark. The wind chopped round from southward and eastward to the northward and westward between 8 and 9 o'clock; after that, it clouded over, and rained at intervals, and then cleared up again. Sometimes we could see the stars, then it clouded over again. I can't say exactly at what time the rain first commenced, for I was not on deck until 10 o'clock. I know the hour at which the collision occurred, because I had been down in the cabin at 11 o'clock, to see how our vessel was lying. I could see the lights of three or four other vessels on the night of the collision. Can't say what vessels they were. I know the light of the "Ella," because when the mate called me, at 10 o'clock, he pointed it out to me, to see whether we dragged our anchor; but I should have known her light, on account of her being the closest vessel to us. I never saw the mail boat passing at any other time during this trip, than on the occasions above mentioned. I do not know the width of the channel of Pass Marienne. We were at anchor at about 7 or 8 miles from the Pass Marienne Light Ship. We were, I think, about 4 miles to the eastward of the only shoal I know of at the eastern mouth of the Pass. We were lying to the E. N. E. of the Light Ship, which bore about W. S. W. of us, or nearly directly west. The "Ella" was lying to the E. or E. N. E. of us, but can't say exactly. I have

crossed the lake several times on the "Florida," "Oregon," "California," and "Mobile" as a passenger, but have never gone through Pass Marienne, but always by Pass Christian. This is my reason for saying that I do not know whether the "Ella" was lying in what they term the steamboat track, or not. But from my experience on the Lake, I should judge that the "Ella" was lying out of the steamboat way.

(Signed) JAMES PROCTOR.

Sworn to and subscribed before me, this 1st March, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

Henry Kahrs. I was mate on board the "Ella" at the time of the collision between her and the "St. Charles." Captain Schernbeck was master. I had been on board two months previous. We had six men on board, all told. We had on board a full cargo. We were at anchor when the collision happened; we had been at anchor about four hours before. I saw the "Caledonia" at anchor when we passed her. Can't say that I saw any other vessels. We anchored about 5 or 6 hundred yards to the eastward of the "Caledonia." I was on watch from 8 to 10 that night. I went below after 10. I did not come up again before the collision. From 8 to 10, the night was very dark and cloudy, which was during my watch. Can't say how it was after 10. I saw a light on board the Caledonia. I could see it distinctly. I saw several other lights around. From 8 to 10, during my watch, there was a light on board the "Ella." It was a globe lamp. It was hanging on the forerigging. Sometimes it is hung in the fore-rigging, sometimes in the main-rigging. It was placed about 7 or 8 feet above the railing, that is, about 11 feet above the deck. It was in that place when I went below at 10. We have been using that light ever since I have been on board the "Ella." I was below when the collision occurred, and can say nothing about it. Our vessel sunk in about 10 or 15 minutes, in about 15 or 16 feet water. I got on board the steamer, and went to Mobile. I have been sailing on the Lakes about five or six years, as a seaman and cook. I had never sailed as mate before I came in the "Ella." We were lying on the N. end of Cat Island, about two miles from shore. When I went below, at 10, the wind was N. N. W. Can't tell how far we were from Pass Christian. At the time I went below, the "Ella" headed N. N. W. The tonnage of the "Ella" is 82. She is larger than the "Caledonia." At the time the accident happened, it was the watch of Charley Brown, a seaman. When I came on deck after the collision, I saw the Captain with the light, he was coming forward to aft, at the time I came out of the cabin.

Cross-examination.

I did not wipe the light during my watch. It did not rain during that time, and the lamp did not need cleaning, and was in good order when I went below. I heard nothing said about our oil being bad that trip. I could not have seen a vessel of the size of the "Ella" without a light more than 10 or 15 yards that night. I believe it had been raining while I was below, as the weather looked squally when I came up; I can't say whether it rained after I got on board the steamer or not, as I remained inside. The navigable channel of Pass Marienne varies; the narrowest place is at the Light Ship, which is about ¼ mile. At the eastern mouth it is about 6 or 7 miles. There is water enough in every part of the channel for steamboats to navigate. The "Ella" was lying about 8 or 9 miles to the southard of east of the Light Ship. She was lying 4 or 5 miles east of the shoals of the Pass Marienne. The soundings at the eastern mouth of the Pass Marienne, along its entire width, vary from 8 to 12 feet.

(Sig'd) HENRY KAHRS.

Sworn to, and subscribed before me, this 1st March, 1853.

(Sig'd) C. V. JONTE,
Justice of the Peace for the Parish of Orleans.

Charles Brown. I had been on board the "Ella" as a seaman 3 or 4 months previous to the collision with the "St. Charles." The "Ella" was at anchor at the time of the collision; don't know at what time she came to anchor; it was about dark. I was on watch at the time of the collision. I was on deck, on larboard side, at the time, and just before. I had been there from 10 o'clock until we were struck. There was a light on the "Ella." It was a round or globe lamp. It was hanging, when I came on deck, in the fore-rigging on the larboard side. It was the light that has always been used on the "Ella" since I have been on her; the kind used on vessels of the description of "Ella." I heard the "St. Charles" a few minutes before I saw her. When I first saw her she was at least 200 yards distant. My attention was directed towards her by the noise she made. I had the lamp down just before I heard her. I had taken it down to wipe the glass to make it shine brighter. After I had wiped it, I put it on top of the cook-house. I put it there so that it would shine better. It would show more light there than in the fore-rigging behind the shrouds. It remained there until the "St. Charles" ran into us. I hailed them long before she ran into us. It could not have been many minutes after the light had been placed on the cook-house until the steamer struck us. It took me but a few minutes, after the light had been placed on the cook-house, until the steamer struck us. It took me but a few minutes to take the lamp down, wipe, and place it on the cook-house. I was standing midships when

I wiped it. The Caledonia was anchored near us. She had a light on her; I saw it. I can't tell how far she lay from us. I hailed the "St. Charles" several times, and one of the men, who had come up in consequence of the noise I had made, also hollered. I heard no answer from the people on the steamer. I think she stopped her engines when close to us; I heard her engine-bell ring. She did not back her wheels before the collision. The night was dark at the time of the collision, and blowing fresh. Our cook-house is about 6 feet high. A light placed on top could be distinctly seen. I think the steamer struck us between the cat-head and fore-rigging. Can't say how soon after she struck us we sunk. She did not stay long by us after the collision, as her captain was in a hurry to get away.

Cross-examination.

I called out to the steamer as soon as I heard her. I do not know whether she was near enough to hear me or not; she was then distant about 150 or 200 y'ds. The "St. Charles" had a light forward, which I saw. I did not see any of the men on board the "St. Charles" until I went on board myself. I saw the Caledonia and several other lights of vessels, whose names I don't know. It was pretty dark, but could see lights. I think I could have seen a vessel of the "Ella's" size at the distance of 300 or 400 y'ds without a light. It had been raining the whole day. I don't know whether it had been raining up to 10 o'clock or not, as I went below. It was not raining when I came up to my watch; but some dew was falling. I could not see the moon or stars during my watch as it was cloudy. The light on the "St. Charles" seemed to be between the upper and lower decks forward. It was not long after I first called till the engine-bell rung; it was but a few seconds. I have never been employed on a steamer. I do not know the way they stop a steamer. I do not know whether it is necessary to back the wheels or not. I did not notice the size of the light of the "St. Charles;" from what I saw of it as it approached, I think it was as large as that of the "Ella" or "Caledonia." I did not complain of the badness of the lamp-oil on that trip; we always had good oil. I only wiped the lamp when I took it down; I did not turn the wick as it did not require it. When the steamer was alongside, or I do not know whether or not it was the spray I felt. I had the lamp down wiping it a few seconds before I heard the Steamer "St. Charles."

(Sig'd) C. BROWN.

Sworn to, and subscribed before me, this 1st March, 1853.

(Sig'd) C. V. JONTE,
Justice of the Peace.

Francis Boyd: I was aboard the "Ella" as seaman about 2 months and a half before the collision. I was not on watch that night; but

was below fast asleep. I went below just after we had come to anchor, and taken down our sails. We took our supper below, and as it was drizzling I did not come up again. My watch did not begin until 12 o'clock. I came on deck just at the moment the steamer struck. I was brought on deck by hearing the man on deck hailing a steamboat. I do not know the name of this man; he was examined as a witness just before me. I do not remember what time it was. I saw two men on deck at the time I came up. I only heard the watch hail the steamboat once. It was that brought me on deck, otherwise I would have been killed. The steamer ran into the place where I had my berth. I brought my chest on deck. I do not know how many persons were on deck when I came up. I did not look around, as I was in a hurry. It was cold, and I was naked.

Cross-examination.

I did not notice the light of the steamer. I saw that her five doors open just as she was into us. I was in too much hurry to notice anything.

Re-examination.

After I got on board the steamer, I did not hear the captain say anything about not being able to wait for us all night.

(Sig'd) F. BOYD.

Sworn to, and subscribed before me, this 1st day of March, 1853.

(Sig'd) C. V. JONTE,
Justice of the Peace.

James Harrison, being duly sworn and examined in the above case, says, I have been engaged for about fifteen years as captain of various vessels on the Gulf and lakes contiguous. I cannot precisely say what portion of that time I have been engaged in navigating these lakes; but I think about 2 years altogether. My last voyage ended about the latter part of last January. I am acquainted with the course of navigation pursued on those lakes by steamboats and other vessels. Steamboats have often passed and repassed me. They have frequently passed me when at anchor at night. I have been requested by Capt. Schernbeck of the "Ella" to go to the spot where the "Ella" was sunk by the Steamer "St. Charles," for the purpose of examination. I went with Capt. Schernbeck and another person, Charles Scheekee, a week ago last Saturday; about 5th March. We went there, and lay some 3 nights on the spot where she is said to have been sunk, and at anchor. We remained there and kept a lookout for the steamboats passing. The steamers passed the spot, both going and coming, from two miles to one-half mile distant. At night the distance was about the same; the "St. Charles" passed the nearest; she passed in daylight, about 9 o'clock A.M., at

the distance of about ½ mile. The place where he was told the "Ella" was sunk is about 2 or 2½ miles from Cat Island, which is the nearest land. This point is about 4 or 5 miles W.N.W. from the extreme east end of Cat Island. There are shoals between the place where the "Ella" was sunk and Cat Island, making off from the Island, which are not fit to navigate over. Some of them come out a considerable distance from the Island, as much as 2½ miles from the dry land. You cannot cross them with 5 feet water. I think the "Ella" lay from ½ to 1 mile from the usual course of the steamers to and from Mobile. The usual and correct course for steamers pursuing an easterly or westerly course is to the north of the place where the "Ella" was sunk. The place where the "Ella" was sunk is about 6 or 8 miles from the Pass Marienne Light Ship. Being shown the diagram marked A, paraphed by witness. On that diagram the true courses through Pass Marienne are marked for steamers, and all other vessels, going and coming. Supposing the "Ella" to have been at the spot designated on the diagram, the steamer must have deviated from her usual and proper course to have run into the "Ella." The place where the "Ella" is said to have been sunk is about 1½ or 2 miles from the shoal marked on the diagram. The positions of Cat Island, the shoal, and all other places marked on the diagram, are correct as to their bearings; but as to their distances, witness only surmises.

Cross-examination.

The defendants reserve all general exceptions and objections to the testimony, and specially object to any exceptions and objections to the testimony, and specially object to any statements of the locality of the "Ella;" those statements being derived from others, at a period long subsequent to the accident.

I know nothing of the collision of my own knowledge. At the time I went out to make the examination, the "Ella" was at the "New Basin." I know nothing of the location of the "Ella," at the time of the collision, except what I learned from others. I have never been engaged on any of the steamboats running these lakes. I think I can describe the usual track of steamers on the lakes. The usual track on some portions of the lake, varies from 2 to 3 miles. In other places it is narrower, and can't be varied from a quarter mile. The extreme eastern entrance shoals of Pass Marienne, are about 3 to 5 miles from the light ship. At the place where the "Ella" is said to have been sunk, the steamers might vary 5 miles without getting aground, for the channel is about that wide, but it would not be a correct course to do so. I did not make the diagram referred to in my examination in chief. I do not know whether the steamers, after reaching the shoal, marked on diagram A, do not sometimes vary their course, and go directly eastward; after leaving, the shoal continues, I should think, on the line designated as the

usual course, about 10 miles. I know nothing of the course of steamers from any other source, than from having seen them pass me, and from having been a passenger on board, and from my knowledge of the course of navigation of sailing vessels. The diagram marked A, was made out by Captain Schernbeck.

Examination in chief resumed.

The place where the "Ella" was lying, is used as a harbor for schooners and other vessels, and I believe, sometimes for steamers. It is selected for this purpose, because it is out of the usual course of a steamer crossing the lakes, and is sheltered from the winds. All persons who are acquainted with the lake, know the extent and position of the shoal, marked on the diagram, relative to the light ship and shore.

(Signed) JAMES HARRISON.

Sworn to and subscribed before me, this 17th day of March, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

Capt. Schernbeck: Being again examined, says: I made out the diagram marked A, and paraphed by the preceding witness. I left here on the 4th March last, to go to the place where the "Ella" was sunk, in company with Capt. Hanson, and a man named Sagard, who owns and commands the Schooner "Favorite," in which we went. I arrived at the spot on the succeeding Sunday afternoon, or at what I considered the spot. The witness being asked his reasons for thinking that the place to which he went, is the spot where the "Ella" was sunk, says: I know it to be the place from the bearings I took from the Cat Island light, and the light ship, and the sand hills on Cat Island. I took these bearings at the time we raised the wreck, and by these bearings I went back to the place. We were at the spot 3 days and nights. While we were there, I counted 9 steamers passing and repassing both ways. I made the diagram marked A, and paraphed by the preceding witness, on my return to New Orleans. I made it out the day after my return. The positions of the different spots, designated on that diagram, are correct as to their bearings. The spot designated as the spot where the "Ella" was sunk, is correct, as near as my bearings will permit. My compass, and that of the Favorite, might vary a little. The bearings were taken at the time the wreck was raised, by the compass of the Schooner "Pascagoula." When I returned in the "Favorite," they were taken by her compass. Compasses vary a little from each other, therefore it is impossible for me to say, that the place designated on the diagram, is the exact spot where the "Ella" sank. I do not believe there is much difference between the place she sank, and the spot designated on the diagram. I do not think the difference is

above 10 or 15 yards every way. The line designated on the diagram, as the usual "course," is the usual and proper course for steamers and all other vessels with a fair wind, to and from New Orleans and Mobile. The distance from the shoal, marked on the diagram to the spot of the "Ella," is, I judge, about 2 miles, as measured by the eye. The place where the "Ella" was sunk is usually used as a harbor for sailing vessels.

Cross-examination.

During the day, on Sunday, after arriving at the point where we supposed the "Ella" was sunk, we cruised about from early in the morning till between 2 and 3 o'clock, looking for the buoy attached to the anchor of the "Ella." Could not find that buoy. We then endeavored to find the place by the bearings I had taken when I left the wreck. When I took the bearings in the "Pascagoula," I took them in writing, in a small memorandum book, which I had in my pocket, marked B. I did not take the distances at the time I took the bearings, but am able to arrive at the distances by measuring the angles. So far as I can say, steamers after reaching the shoal designated on the diagram A, may sometimes go directly east, or northeast, or north-northeast. After passing the shoal, vessels have the entire play from shore to shore, being about 7 or 8 miles. The distance of the "Ella," from the Cat Island Light House, is from $1\frac{3}{4}$ to $2\frac{1}{4}$ miles.

Re-examination.

All the steamers which passed us, while we were lying at the spot where the "Ella" was sunk, passed at the distance of $1\frac{1}{2}$ to 2 miles, except the "St. Charles," which passed within $\frac{1}{2}$ or $\frac{3}{4}$ miles, between 8 and 9 o'clock.

(Signed) JOHN SCHERNBECK.

Sworn to and subscribed before me, this 17th day of March, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

[For diagram marked A, see original, page 52.]

Transcript.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMER "ST. CHARLES."

Depositions of George W. Walker, Wm. Allen, George T. Jones, and John Hanneberg, for claimants. Offered and read in evidence for claimants, and filed May 31st, 1853.

To the Hon. M. M. Reynolds, the Judge of the Fourth District Court of New Orleans.

The petition of James L. Day, of Norwich, Connecticut; Abra'm Wolf, of Mobile, Alabama; John Geddes, of Cincinnati, Ohio; John Grant, of Pascagoula, Miss.; Roger A. Hiern and Robert Geddes, of New Orleans, owners of the Steamboat "St. Charles."

Respectfully shows.

That Messrs. Pooley, Nicoll & Co., a commercial firm, composed of Walter Nicol and J. O. Pooley, who reside in New Orleans, and the Sun Mutual Insurance, a body corporate, by the laws of New York, are about instituting a suit in some of the Courts of the State of Louisiana, for the recovery of loss or damage done to the Schooner "Ella," belonging to said firm of Pooley, Nicol & Co., and insured in the office of the Sun Mutual Insurance Company, of New Orleans.

That said Pooley, Nicol & Co., have given formal notice to your petitioners, through Robert Geddes, Esq., their agent, that they would be held accountable for loss or damage, said to have been done to the Schooner "Ella," by the Steamer "St. Charles," on the night of the 5th of February, 1853.

Petitioners have good reason to fear that suit, as aforesaid, is about to be instituted by Pooley, Nicol & Co., or the Sun Mutual Insurance Company. Petitioners aver, that the witnesses necessary for their defence, are transitory persons, temporarily in the City of New Orleans, but are, as petitioners believe, about to depart permanently from the State, without having any fixed place of residence previous to the institution of said suit; that their testimony is essential to the defence of petitioners in any suit growing out of the loss or destruction of said vessel, or damage of the same, that may be instituted by the parties above-named, or either of them; that said witnesses are as follows:

George Jones, Pilot, Jno. Hammerberry, George Walker, Jno. H. Smith, John Hart, William Allen, Dan. McDaniel, and Martin Keogh.

Petitioners therefore pray, that the said Pooley, Nicol & Co., and Walter Nicol and J. C. Pooley, composing said firm, and the said Sun Mutual Insurance Company, through Leonard Matthews, Esq., its agent, be cited to appear and examine said witnesses contradictorily with your petitioners, touching the matters and things referred to in this petition, and in the note hereto annexed. That C. V. Jonte, 2d Justice of the Peace, be appointed commissioner to take said testimony *in perpetuam rei memoriam*, the same to be used in any suit that may hereafter grow out of the loss or damage said to have been done by the Steamer "St. Charles" to the Schooner "Ella." Petitioners ask for all such other orders as are necessary in the premises, and for general and equitable relief.

(Sig'd) CLARKE & BAYNE,

For Petitioner.

Robert Geddes, being duly sworn, deposes and says, that he is a part owner of the Steamer "St. Charles," and agent for the other owners named in the above petition; that all allegations of the above petition are true to the best of his knowledge and belief.

(Sig'd) R. GEDDES.

Sworn to, and subscribed before me, this 18th day Feb., 1853.

(Sig'd) R. RICHARDSON,
3d J. P.

Let a commission issue in this case as prayed for, directed to C. V. Jonte, Esq., 2d Justice of the Peace, to examine the witnesses named in the within petition; and let Messrs. Pooley, Nicol & Co., and the Sun Mutual Insurance Company of New York, through L. Matthews, Esq., its Agent, be duly notified to attend at the taking of said depositions, on Wednesday next, 23d instant, at 9½ o'clock A.M., before said C. V. Jonte, Esq.; and let said Justice issue the summonses for the attendance of said witnesses on the day and hour aforesaid.

(Sig'd) M. M. REYNOLDS,
February, 19th, 1853. Judge.

February 19th, 1853.

A true copy.

[SEAL.] (Sig'd) SAMUEL GILMORE,
Dy. Clerk.

Fourth District Court of New Orleans, the State of Louisiana.

To C. V. Jonte, Esq., 2d Justice of the Peace for the Parish of Orleans, Greeting:

Robert Geddes, Agent and part owner of the Steamer "St. Charles" et al., praying to take testimony *in perpetuam rei memoriam.*

No. 6087.

Know ye, that we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant, in a certain matter in the Fourth District Court of New Orleans, wherein Robert Geddes, agent and part owner of the Steamer "St. Charles" and others, pray for testimony to be taken *in perpetuam rei memoriam.*

Therefore, we desire you, that at certain times and places by you to be appointed for that purpose, you cause the said witnesses to come before you, that you then and there examine them apart, upon their respective oaths first taken before you upon the Holy Evangelists; that you reduce their examinations to writing, and cause the witnesses to sign the same, and when you shall so have taken them,

that you send the same with this commission, closed under your seal, to us, in our Fourth District Court, at the City of New Orleans, without delay.

Witness, the Honorable M. M. Reynolds, Judge of our said Court, this 21st day of February, in the year of our Lord one thousand eight hundred and fifty-three, and in the seventy-seventh year of the Independence of the United States.

[SEAL.]

(Sig'd) SAM'L GILMORE,
Dy. Clerk.

The State of Louisiana, Parish of Orleans, City of New Orleans.

Robert Geddes, agent and part owner of the Steamer "St. Charles" et al., praying to take testimony *in perpetuam rei memoriam.*

Before C. V. Jonte, Second Justice of the Peace for the Parish of Orleans.

To L. Matthews, Esq., and J. C. Pooley, Nicol & Co., New Orleans:

You are hereby notified, that by virtue of a commission to me directed from the honorable the Fourth District Court of New Orleans, I shall proceed to take the testimony of in the above entitled case, on behalf of Robert Geddes therein, on Wednesday, the 23d day of February, 1853, at 9½ o'clock A.M., of said day.

By order of the Court.

C. V. JONTE,
Second Justice of the Peace for the Parish of Orleans.

(Sig'd) J. K. KULLIGAN,
Clerk.

Received, February 21st, 1853, and on the same day served a true copy of the within notice on L. Mathews, Esq., and Messrs. J. C. Pooley, Nicol & Co., each in person.

(Sig'd) J. R. BEIDELMAN,
Deputy Constable.

The State of Louisiana, Parish of Orleans, City of N. Orleans.

In the 4th District Court of New Orleans, State of Louisiana, No. 6087. Robert Geddes, agent and part owner of the Steamer "St. Charles" et al., praying to take testimony *in perpetuam rei memoriam.*

Deposition of four witnesses taken and subscribed before me, Charles V. Jonte, Second Justice of the Peace for the Parish of Orleans, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such, on the 23d day of February, A.D. eighteen hundred and fifty-three, at 9½ to 2 o'clock of said day, at my office, in the City of New Orleans, in the matter of Robert Geddes, agent and part owner of the Steamer "St. Charles," praying to take testimony *in*

perpetuam rei memoriam, No. 6087 of the docket of the 4th District Court, under a commission hereto annexed, and the said testimony being had and reduced to writing, in the presence of Mr. C. B. Singleton, Attorney for the Home Mutual Insurance Company, J. A. Maybin, Esq., on behalf of the Sun Mutual Insurance Company, and John Schernbeck, Captain of the Schooner "Ella," on the part of the said petitioners, George W. Walker, Wm. Allen, George T. Jones, and John Hannerberg, witnesses, known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn upon the Holy Evangelists, and according to law, to testify to the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on this oath aforesaid, depose and say, and answer as follows, to wit:

George T. Walker deposes and says: I am the first mate of the Steamer "St. Charles," and was so during the whole of the month of February, 1853; by the night of the 5th February, 1853, the Steamer "St. Charles" was on her passage from New Orleans to Mobile; about half-past 11 o'clock P.M., when she came in collision with the Schooner "Ella." She, the Schooner "Ella," had no light up at the time we struck; in a few minutes after we struck she brought a light on deck; that was the first light was seen; the night was dark and rainy. A few minutes before, we passed another vessel with a light up. The captain, crew, and passengers of the "Ella" were taken on board the Steamer "St. Charles" after she was struck; the Schooner "Ella" appeared to be in a sinking condition at the time. After the captain of the Schooner "Ella" was taken on board the Steamer "St. Charles," he stated that when he was going to bed on board the schooner he gave orders to put up a light; that his oil was bad, and could not keep it burning, and for the watch to be sure and keep the lamp trim'd. I believe there were two passengers on board the Schooner "Ella." It was so dark that the officers of the "St. Charles" could not possibly see any vessel off in advance of her that had no light out. I know that the officers of the "St. Charles" were at their posts at the time. The watchman was forward on the lower deck on the forecastle; the pilot was on the second deck forward; I was standing on the wing of the steamer (*i. e.* between the engine and forward); a-looking ahead I would have seen a light, if one had been on board the "Ella." I seen the one on the vessel we passed a few minutes before the accident occurred, in about 20 minutes after we passed the Mary Anne Light Ship, and distance about 60 miles from New Orleans, namely, opposite Pass Christian. The Schooner "Ella" was at anchor when we struck her. It is impossible, on such a night as that of the 5th of February was, to see a vessel of the size of the Schooner "Ella" when not having a light up, and impossible to avoid an accident of the kind referred to. It is the custom of all vessels laying or running in the

Bay to have a light out. The Steamer "St. Charles" had full lights out in front. No notice or call of any kind was given from the "Ella" that I heard; if we had been hailed by the Schooner "Ella," I was in a position to have heard it, and I would have heard it.

Cross-examined, reserving all legal exceptions.

The Schooner "Ella" had no light out at all that could be seen. I did not see the "Ella" at all before the collision. We struck some part forward of the Schooner "Ella." In about 10 minutes after the collision, I think the schooner sank. I did not go on board of her; but went as far as her stern in a yawl; the schooner sank in about a depth of 14 to 15 feet of water. Thinks the wind was at the time blowing west, northwest; we were about 7 miles from Pass Christian; it was blowing a fresh breeze at the time. The captain of the "Ella" informed me after the collision that the schooner was bound for Pascagoula. Three of the persons on board the schooner jumped on board the steamer; the remainder came on board of the steamer on the boat of the schooner. The "St. Charles" is a large boat; was commanded at the time by Captain Reuben Post. The "Ella" was lying in her usual course for vessels going to Pascagoula. The statement I speak of, in my direct examination, of the captain of the "Ella," about the light and the oil, was not made to me, but to Capt. Post and one or two gentlemen passengers, whose names I do not recollect, in the Social Hall of the Steamer "St. Charles," and I was listening to it. He also stated at the same time that the insurance office would soon cross her. I was about five feet from the captain of the schooner at the time he made the statements referred to. I was at the time sitting down warming myself in the Social Hall.

I had no knowledge that the steamer was in the vicinity of any vessel but the one passed, that had the light up, until we came in collision with the "Ella." The Steamer "St. Charles" continued her course without interruption, until the collision with the Schooner "Ella." Her engines were not backed or stopped before striking the schooner. They were stopped at the very instant of striking the Schooner "Ella." There was no signal given to stop them until she struck her, and then they were stopped the very instant of striking the schooner. The direction of the "St. Charles" was at the time of the collision, northeast by east. The "St. Charles" was running at about 10 or 11 knots an hour at the time of the collision. I could have heard a call from the schooner, if it had been made, at a distance of two hundred yards, far enough to have avoided the collision. The "St. Charles," running at the rate she was running, could have been stopped and backed sufficiently to have avoided a collision in twice the length of herself, or in about 400 feet, or could have changed her course in about 200 feet, sufficient to have avoided

the collision. I went up in the cabin in about three-fourths of an hour after the collision, and there were then 7 or 8 passengers up in the cabin. Thinks there were 7 or 8 passengers up at the time of the collision. I stand a regular watch on board the "St. Charles," which is from 8 to 12, P. M. I was on the same watch as the watchman and pilot.

(Signed) GEORGE W. WALKER.

Sworn to and subscribed before me, this 23d February, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

Wm. Allen, sworn, deposes and says, that in the month of February, 1853, I was engaged on board the Steamer "St. Charles" as watchman. I was on watch when the collision took place between the Steamer "St. Charles" and the Schooner "Ella." There was no light on board the schooner at any time during the approach of the steamer towards the schooner. I did not hear any hail or call from the Schooner "Ella." I was in such a place on board the steamer as that I would have heard a call or hail, if one had been made. It was impossible to see the schooner ahead of us when she had no light on board. It is impossible to avoid accidents of the kind referred to when vessels of the kind of the "Ella" have no light up. On dark nights, all vessels, whether lying to or running, have lights up. Vessels running do not always keep their light up, but they put up their light on the approach of any other ship or vessel; but vessels at anchor should always have them up. The first mate was on the lower deck on watch; I cannot state positively on what deck, but I know he was on watch from 8 to 12 o'clock P. M. The head engineer, Mr. Smith, was on watch, and his partner, J. A. Hart, the Pilot, was on deck—the upper deck, as I suppose, his usual place of duty—am not positive as to place. I was on the lookout for anything ahead of the schooner. If there had been a light on board the Schooner "Ella," I would have seen it in time, so as to have avoided the collision. There is equally as much danger, whether the vessel is running or laying to, of being run over. The fire-doors of the boilers being opened, I saw the Schooner "Ella." The distance was very short. Just as we were nearly on her, I ran away to the larboard, to avoid or escape danger. The steamer struck the schooner with her larboard bow. At the very instant I saw the schooner, the bell sounded, and the engine stopped, showing that the officers on the upper deck saw it at the same moment (as I suppose); there was scarce time to call out after the schooner was seen before the collision, and it was impossible to avoid it.

Cross-examined, reserving all legal exceptions.

I have been engaged on the Steamer "St. Charles" nearly three months, in the capacity of watchman. Mr. Walker, the first mate,

had been in the service of the steamer, left her, and returned about the same time I did. I cannot tell how many passengers were on board the steamer at the time. They were passengers on board. I cannot tell whether, at the time of the collision, the Steamer "St. Charles" was pursuing the regular course for vessels going from New Orleans to Mobile, not being in my department to know. The collision occurred after we had passed the light ship in Pass Mary Ann. The steamer struck the larboard bow of the schooner, when the schooner sunk. Three men jumped from the schooner to the steamer at my request. We heard the Captain, or some one from the schooner sing out, "she is sinking," and we lowered our yawl, but found that the crew of the schooner got into their own yawl, and came on board the steamer. The steamer lay to until the schooner sunk. I cannot say where Mr. Walker was at the time the 3 men came on board. The steamer was not injured by the collision. The steps to which I refer, upon which I was standing with one foot on, and one foot on the deck, run down in front of the boiler deck. I was standing with my back against the railing of steps, and looking directly front. The Steamer "St. Charles" has not stopped or laid to on account of dark nights since I have been aboard of her. She has stopped more than once on account of fog, but don't know how many times since I have been on board of her—the fogs I allude to were in the night. I don't know what may occur in the daytime, as I am asleep in day-time. I know of no rule as to the place where it is customary the place a light at night should be hung up. Some put it one place, some another. There was no fog on the night of the collision.

(Signed) WILLIAM ALLEN.

Sworn to and subscribed before me, this 23d Feb., 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

George T. Jones, sworn, deposes and says: the Steamer "St. Charles" passed the light ship in Pass Mary Ann five minutes before 11 o'clock P. M., on the night of the 5th February, 1853. The night was very dark, and drizzling rain. When opposite the light ship in the Pass Mary Ann, I altered my course from East N. E. to N. E. by E., and continued on in that course, without interruption, for 38 minutes from the light ship. When we passed under the stern of a large schooner, which had a light up, that I seen directly after leaving the light ship. 40 minutes after leaving the light ship, I altered my course from N. E. by E. to E. N. E. When going out of the pilot-house, and in the act of shutting the pilot-house door, the starboard fire-door of the boilers, on opening, the light shining ahead, caused me to see the schooner, I hallowing to the man at the wheel to stop the boat, which he did immediately, by ringing the signal bell, and the engines were stopped, and which was no more

than done, when we struck the vessel alluded to. The steamer's way was deadened by the shock, and the vessel swung alongside, when I ran to the side; heard the Captain of the schooner say she was sinking. In the mean time Captain Post came to my side, and said that the schooner was all clear of us, to go ahead. I then told Captain Post that the Captain of the schooner had said she was sinking. Captain Post then ordered the steamer to be stopped, through me, and to be backed, and get alongside the schooner, if it was possible. In the mean time, our yawl was lowered, and sent to the relief of the schooner. On finding the steamer unmanageable, Captain Post ordered me to stop her, and to lay still. In going through Pass Marienne, the steamer was in her usual track. She was going at her usual rate of speed, as near as I can judge; she was going at the rate of 8 or 9 knots an hour. I cannot say whether all the officers of the "St. Charles," were at their places or not, as I was on the hurricane deck. The steersman was in the wheel-house, at his post. The steamer had two signal lights out, one about 10 feet above the deck, on the signal staff aft, and one on the boiler-deck in front. The Schooner "Ella" had no light that could be discovered from my position on the deck. I should have seen any light; I was on the lookout for anything of the kind. It is impossible to avoid accidents of the kind referred to on such a night as that of the 5th February was, if vessels are laying in the bay without light. It is customary for vessels laying at anchor in the bay to have lights up; sometimes they put it up in the main rigging; sometimes in the fore-rigging, and sometimes hold it up. There was no call or hailing by the men or officers of the Schooner "Ella;" if there had been, I would have heard it. If any call had been made, the collision could have been avoided. Within the range of that call, I passed the word for altering my course at the time first referred to, through the watchman, and the same was acted upon.

Cross-examined, reserving all legal exceptions.

At the time of the collision, I had been one and a half months pilot of the Steamer "St. Charles." It was about ten miles distance from the light ship to the schooner, as near as I can judge. The collision occurred, as near as I can judge, about 3 or 4 miles from Cat Island, and about 5 miles to Pass Christian, which would be about N. N. W. from the place of collision. As near as I can guess, it was about one-half hour after collision the schooner sank. We were outside the Pass Mary Ann at the time the collision occurred, and in what is called the Mississippi Sound. The width of the navigable portion of the sound where the collision occurred is about six miles. The wind was about north where the collision occurred.

(Signed) GEO. T. JAMES.

Sworn to and subscribed before me, this 23d February, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

John Hanneberg, sworn, deposes and says: I have been steersman of the "St. Charles" since she commenced to run; I was on duty on the night of the 5th February, when the collision with the Schooner "Ella" occurred; I was at the wheel steering at the time the collision occurred; the Schooner "Ella" had no light out at the time of the approach of the Steamer "St. Charles;" I did not hear any call made by any person on board the Schooner "Ella;" if any light had been on the Schooner "Ella," I suppose I would have seen it, as I saw the one on the other schooner we passed; from the time I relieved my partner, the Steamer "St. Charles" had her usual signal light out forward.

Cross-examined, reserving all legal exceptions.

When I relieved my partner he told me to pursue a course of N. E. by E., which I did until the steamer passed the schooner which had the light up; when I relieved my partner, the steamer was to the eastward of Cat Island Light, which I believe is the N. N. W. end of the Island; after leaving the schooner with the light, our course was east northeast, which course we pursued until the collision; I was at the helm at the time of the collision; I saw the schooner myself, before the steamer struck; she was about ½ the length of the steamer off when I discovered her; when I discovered the schooner, I jumped round with the wheel so as to catch the stopping bells; I caught the bells and pulled on them so as to stop the boat from going ahead; as I pulled the bells, the pilot sung out to me to stop the boat; I replied, that she was stopped; when the boat was stopped, so far as I could judge, she was right up to the schooner, and the steamer struck her immediately; as far as I could judge, I told the pilot that the steamer struck about the larboard cat head of the schooner; the Steamer "St. Charles" answers her helm easily in deep water, but it depends on whether she is heavily loaded or not; sometimes, when the wind is on the larboard and give her helm a starboard, she comes round quickly; the wind at the time of the collision, was blowing about one half a point of her larboard beam; the wind was a favorable one for the steamer to obey her helm; when I say that the steamer was stopped, I mean that the engine was stopped.

Re-examination resumed.

I did all in my power to stop the steamer and avoid the collision, at the moment I saw the schooner.

(Signed) JOHN [his X mark] HANNEBERG.

Sworn to and subscribed before me, this 23d February, 1853.
(Signed) C. V. JONTE,
Justice of the Peace.

Geo. T. Jones recalled and examined.—After the steamer pursued on her course, I got in conversation with the Captain of the Schooner "Ella," in which he told me that his watch was from 4 to 8 o'clock P. M., and before going below, he gave the mate that succeeded him in taking his watch on deck, from 8 to 12, instructions to keep the lamp well trimmed, wipe the lantern off, as it was a very damp night, so that the light could be seen at a distance, and that those who were on watch on the schooner told him they were trimming the lamp at the time the collision occurred; after the collision, I seen the Captain of the schooner run forward with a light in his hand, to the place where the schooner was struck, and sung out that she was sinking.

Cross-examined.

This conversation occurred outside the Social Hall, the leeside of the cabin; no person was present at the conversation; the Captain of the steamer shortly after came up.
(Signed) GEO. T. JONES,

Sworn to and subscribed before me, this 23d February, 1853.
(Signed) C. V. JONTE,
Justice of the Peace.

All exceptions to the conversations between the Captain of the schooner, as stated by Mr. Jones and Mr. Walker, are specially reserved.

The State of Louisiana, Parish of Orleans, City of New Orleans.

I, Charles V. Jonte, Second Justice of the Peace for the Parish of Orleans, duly elected, sworn, commissioned, and acting as such in and for the City of New Orleans, in the Parish of Orleans, in the State of Louisiana, do hereby certify and make known, that the foregoing depositions of George W. Walker, William Allen, George T. Jones, and John Hanneberg, were taken before me, on the 23d day of February, A. D. eighteen hundred and fifty-three, at the time and place in the caption hereof mentioned. That the examinations, responses, and statements of each of said deponents were reduced to writing by L. K. Kulligan, a disinterested person in the issue of said cause, and by the said deponents respectively sworn to and subscribed, in my presence, at time and place aforesaid, and also in the presence of Thomas L. Bayne, Esq., of counsel, appearing for the petitioners; Wolff and Singleton, of counsel, appearing for the "Home Mutual Insurance Company;" J. A. Maybin, Esq., of coun-

sel, for the "Sun Mutual Insurance Company;" and John Schernbeck, Captain of the "Ella."

In testimony whereof, I, Charles V. Jonte, Justice of the Peace for the Parish of Orleans aforesaid, do hereunto set my hand, at New Orleans, in the State of Louisiana, this 23d day of February, A. D. eighteen hundred and fifty-three.

(Signed) C. V. JONTE,
Second Justice of the Peace for the Parish of Orleans.

Costs of the foregoing depositions for claim'ts, paid by petitioners, $19 00.

[The law does not require that I should use a seal of office.]

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
STEAMBOAT "ST. CHARLES."

Deposition of Captain Reuben Post, for claimants, taken by consent. Filed May 2d, 1853, offered in evidence and read for libellants, May 31st, 1853.

Reuben Post, being duly sworn, says, that he was captain of the Steamer "St. Charles," in February, 1853; I have been running on the Lake since 1839, with the exception of one season, and am well acquainted with its navigation. The Steamer "St. Charles" left the Port of New Orleans about five o'clock, on the 5th day of February, 1853, bound for the Port of Mobile, in the State of Alabama; we passed the Light Ship in Pass Marienne, about 10½ o'clock, or thereabouts, of the same evening of our departure; the night was dark and cloudy, and the wind blowing was blowing briskly; eight or nine miles from the Light Ship, in our course toward Mobile, when four or five miles from Cat Island, and about eight miles from the wharf at Pass Christian, we suddenly came upon the Schooner "Ella," lying at anchor; I was in my room at the time the accident occurred; I had been there about fifteen minutes; when I retired to my room, the officers of the "St. Charles" were at their regular posts of duty; the engineer, the pilot, and watch; I did not look at the compass, but from the bearings of the Cat Island Light, and the Light Ship, we were in our usual track towards Mobile at the time I retired, and when I came up after the collision.

Before I retired to my room, my room being on the upper deck, I saw at a distance a light off the larboard bow of the Steamer "St. Charles," about a mile distant, or perhaps, not more than half a mile; at first, I supposed this was the light of the steamer from Mobile to New Orleans, but seeing only one light, I concluded it was not the steamer; it proved to be the Schooner "Caledonia;" I saw no other light in our course, or anywhere within our range; the

Schooner "Caledonia" was lying *was* west northwest from the place where we came in contact with the Schooner "Ella."

The first that I heard of any accident, or danger of accident, was the ringing of the engine bell of the steamer; the engine was stopped immediately upon the sound of the bell, and the collision occurred almost at the same instant; I ran out of my room the instant the accident occurred; the schooner had been lying head to the northward, and being struck by us in our course eastward on the larboard side, was canted round alongside of us; seeing no light on board of the schooner I spoke, and said, "Why the hell don't you keep a light out?" there was no answer put, and at that moment I saw a light coming, as I supposed, up out of the cabin of the schooner aft; the pilot being alongside of me he spoke, and asked those of the "Ella" if they were injured; there was no reply to him until the man had got forward with his light; we then said the schooner was sinking; we were then nearly by the schooner; I observed to the pilot to let the steamer go ahead to get clear of the schooner's jib-boom, and then we would come back alongside of it; the mate being on the lower deck of the "St. Charles," I told him to get the men off the schooner as soon as possible; he did so; the boat was lowered and sent to the schooner as soon as possible, and the men were taken off; the schooner was about sinking when the boat reached her; after the boat returned—the schooner's boat and the steamer's yacht—I asked the mate if he had saved all the crew and passengers; we then hoisted our boat up, drew the schooner's boat in on our decks, and proceeded on our passage; after we were under way, I went below into the cabin, and I found the man who represented himself as captain of the Schooner "Ella;" I asked him what time he came to anchor there; he said that afternoon; that it was blowing very heavy, and he was afraid to go outside; I then asked him why he had not a light up, when he knew that there were two steamers to pass that night (mail boats), one to the eastward and one to the westward; he said that he had had a light up, but that the oil was bad and the light had gone out, and the men had taken it down to trim it; I then remarked to him, that he should have had another light to replace it, while he was trimming that; he then said there was another schooner lying two or three hundred yards to the northward and westward of him, bound for Apalachicola; I knew there was a vessel lying there, I saw her light and avoided her, and if you had had a light up, we would have kept clear of you; and then said to him, that it was a very negligent and careless piece of business to lay in the wake of steamboats without any light up or watch; this was all the conversation that occurred between us; if there had been any appearance of light on the deck of the Schooner "Ella" or in her rigging, the officers of the "St. Charles" could have seen it, as they saw, and I saw that of the "Caledonia;" the night was dark, but not thick; a light could have been seen at some distance if it was kept clean; there was a

very slight rain about the time of the collision, and a little before a wind squall with a little rain; the noise of the steamboat could be heard by on board the schooner at such a distance that the accident might have been avoided if a light had been shown; it is utterly impossible on a dark night, to see such a vessel as the "Ella" without a light, in time to avoid collision; on a clear starlight, you might see one; after the steamer was clear of the schooner, and after the collision, it was impossible for me to see the schooner forty or fifty yards distant; I was guided alone by the light which had been brought up out of the cabin; after the collision occurred at the place where it occurred, the Steamer "St. Charles" was in the usual channel of the steamers from New Orleans to Mobile, and from Mobile to New Orleans; we may vary two or three hundred yards in our course, because the channel is wide at the point where the accident occurred; we proceeded thence from that point toward Mobile, in our regular course.

On our return from Mobile to New Orleans, it was a bright starlight night, we passed near the wreck of the Schooner "Ella," say about one-fourth of a mile distant, far enough to keep entirely clear of her. There were one or two vessels lying with lights up by her side. We passed her several times, or what we supposed was the wreck of the "Ella" several times in going and returning from New Orleans; we generally kept about the same distance from her each time, unless we went into Pass Christian—then we had to keep more northward. After leaving the Light Ship in Pass Marienne our course is first east-northeast for about two miles; we then steer northeast for about twenty minutes, or four miles; we then steer east-northeast, one direct course through the Lake for Round Island Shoals; this brings us up to the point where the collision with the Schooner "Ella" occurred. The noise of the steamer, a high pressure boat, was such that I suppose if there had been any one awake on board of the Schooner "Ella" there would have been time enough after the noise of our approach was heard to have produced a light, and thus enabled us to avoid the schooner. If the fire doors of the steamer had not been opened just a moment before the collision, I believe we should have run over the schooner without seeing her at all.

(Signed) REUBEN POST.

Sworn to and subscribed before me this 23d day of April, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

Testimony by consent. Objections as to the competency of witnesses reserved.

(Signed) WOLFE & SINGLETON,
Atty's for Libellants.

ROGERS & Co. et al. and
HURLEY & Co. et al.
v.
STEAMER "ST. CHARLES."

Testimony of Pilot, Anthony Tyson, for claimants—taken by consent. Filed May 2d, 1853. Offered in evidence and read for claimants 31st day of May, 1853.

Anthony Tyson, being sworn, says that he is a pilot on board of the Steamer "Oregon," has been employed as pilot on the Lake since 1839, and has been upon the lake since 1835. I have been constantly engaged as pilot on the mail steamers between New Orleans and Mobile since 1839; am well acquainted with the navigation of the lake and the course of vessels or steamboats from Mobile to New Orleans, and from New Orleans to Mobile. I know where the Schooner "Ella" lay at the time of the collision with the Steamer "St. Charles." We passed the place in the Steamer "Oregon" on the two following trips from New Orleans to Mobile. There were two schooners lying by the side of the "Ella" on the first trip, say 6th February. I think we went to the right of the "Ella," and on the following night went to the left of said schooner. She lay precisely in our track, and on one night to the right to avoid her, and on the next night to the left. I have made a small sketch of the course of the steamers from New Orleans to Mobile, marking the point where the collision occurred and the bearing of this place to other known points of land, lights, &c. I append the same as part of my testimony herein. The courses marked thereon are the correct courses, the courses run by me on the nights when the "Oregon" passed the wreck of the "Ella;" the schooners lying by the "Ella" had a light; there was one on each side. The first night I passed within twenty yards of these vessels, within speaking distance. On the second night we went about one quarter of a mile from them. The track is the same from Mobile to New Orleans and New Orleans to Mobile with reverse courses. It is not possible to see a small vessel lying in the track of the steamers on a very dark night—such a night as this was at the place where I was (Mobile) in time to avoid a collision if they have no light out to exhibit. I know that the pilots of the other steamers of the mail line run precisely the same courses with me. We meet them and pass them continually from trip to trip.

Cross-examined.

I was told by the pilot of the "St. Charles" of the collision, and cautioned by him to avoid the wreck of the "Ella" in my course toward New Orleans. I was on the look-out, and passed as I have stated the wreck of the "Ella" with other vessels lying by her side

on the two trips after the collision occurred. I do not know otherwise than from these facts. The Light Ship bore from the wreck a course about southwest-by-west and about seven miles distant, and Cat Island Light about south-by-west about five miles. I took the bearings of the wreck, because I was afraid that it would not be raised, and I wanted to know its locality to avoid it. I did not go on the Light Ship to take these bearings, I took them from the Steamer "Oregon" as I was passing. It was night when I passed. The usual speed of the Steamer "St. Charles" in the depth of water where the collision occurred is about ten miles per hour.

(Signed) ANTHONY TYSON.

Sworn to and subscribed before me this 30th day of April, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

Testimony taken by consent, reserving all legal exceptions, April 30th, 1853.

(Signed) WOLFE & SINGLETON,
for Libellants.

(For sketch referred to in deposition of Anthony Tyson, see original, page 77.)

Transcript.

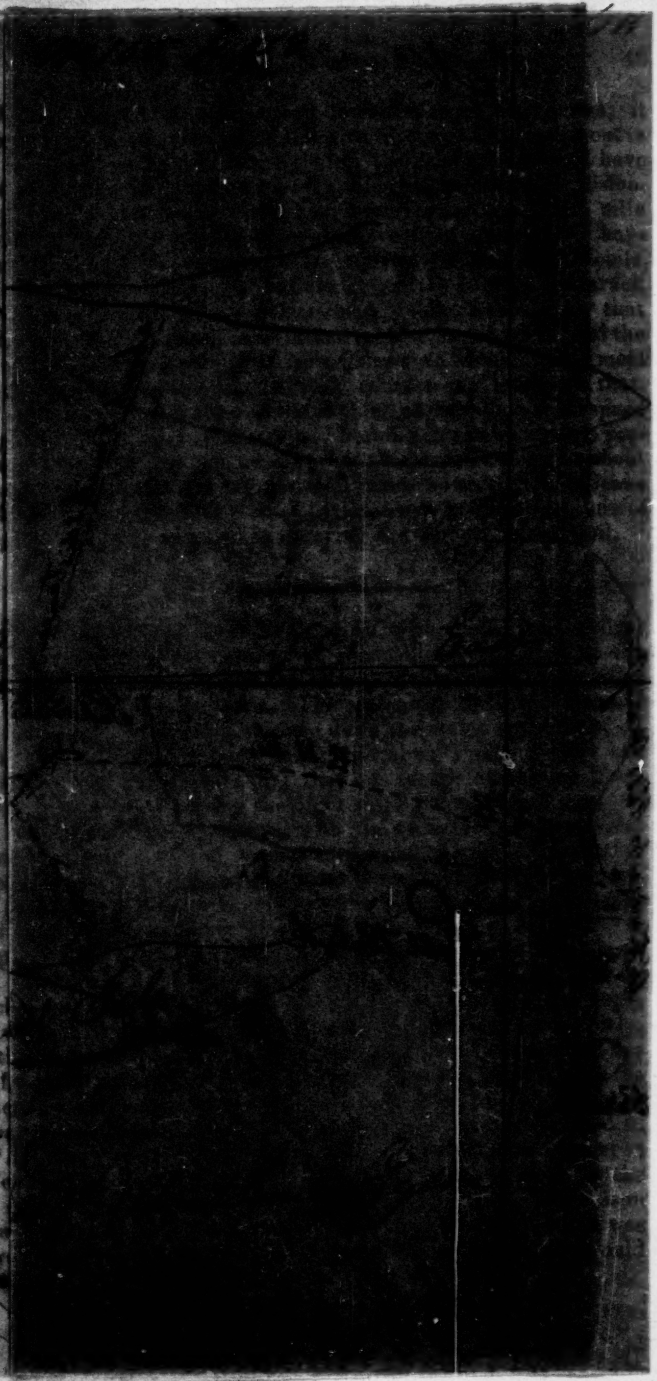
ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMER "ST. CHARLES."

For claimants. Testimony filed June 3d, 1853. Read in evidence, June 4.

Of John H. Smith, engineer, being duly sworn, says: I was on board of the Steamer "St. Charles," during the month of February, 1853; engaged as head engineer of the same; I was standing by the engine on the Steamer "St. Charles," at the time of the collision between the "St. Charles" and the Schooner "Ella;" I was standing just at the steam gauge, at the starboard engine; I had just stepped there to order my partner to put off steam, when the bell rang for us to stop. We had on about 125 lbs. of steam to the square inch. Steamers generally carry 140 lbs. to the square inch, but I wanted to make a uniform rate of travel; say at 120 lbs. steam to square inch, and I should therefore have reduced to that. I was forward on the Steamer "St Charles," not three minutes before the time of the collision; there was no light ahead of us on the schooner that we struck; there was a light north of us about two miles. I was in such a position on the "St. Charles," looking forward, as to have seen a light if there had been any, on any schooner ahead of

Testimony of Pilot Olsen

Rock referred to in



on the two trips after the collision occurred. I do not know otherwise than from these facts. The Light Ship bore from the wreck a course about southwest-by-west and about seven miles distant, and Cat Island Light about south-by-west about five miles. I took the bearings of the wreck, because I was afraid that it would not be raised, and I wanted to know its locality to avoid it. I did not go on the Light Ship to take these bearings, I took them from the Steamer "Oregon" as I was passing. It was night when I passed. The usual speed of the Steamer "St. Charles" in the depth of water where the collision occurred is about ten miles per hour.

(Signed) ANTHONY TYSON.

Sworn to and subscribed before me this 30th day of April, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

Testimony taken by consent, reserving all legal exceptions, April 30th, 1853.

(Signed) WOLFE & SINGLETON,
for Libellants.

(For sketch referred to in deposition of Anthony Tyson, see original, page 77.)

Transcript.

ROGERS & Co. et al.,
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us. The schooner could not be seen on such a night as this was; it was impossible to see a vessel of the size of the "Ella," without a light. If there had been any light on the "Ella," I should have seen it when I was forward on the St. Charles, before the collision. If a light had been seen, or could have been seen within ¼ of a mile distant from the vessel, collision might have been avoided. I have been engaged on the steamers, between New Orleans and Mobile, about three years. From my knowledge of the courses and track of the steamers between New Orleans and Mobile, I should say that the Steamer "St. Charles," was in her regular, usual track, and the track of the other steamers from New Orleans to Mobile. We meet them, and pass them, and I know their courses and track by that. The "St. Charles" was not *was not* running at more than usual speed the night of the collision. There was nothing in the weather to prevent us from running at our usual speed. We were running at about such speed as to make the regular mail time between New Orleans and Mobile. The Steamer "St. Charles," was at that time, one of the regular mail line engaged in carrying the United States Mail.

Cross-examined.

I could not have seen the "Ella" at all, without she had a light that night. I was at the moment of the collision standing at the engine, and my partner was at the other. I remained at the engine until the schooner went down. The watchmen Bill, was forward when I was there; he had just come down the stairs at the time. I do not know what he had been doing up-stairs; I only noticed one light after I left the light ship; that was to the northward of us. Twenty minutes after leaving the light ship, I saw it, light ship. I think I am sufficiently acquainted with the route of steamers, from this port to Mobile, to tell on such a night as the collision, whether the vessel was a half mile off the usual track, even though the navigable portion of the water should be six or eight miles wide. I never served in any other capacity on the lakes, than that of engineer. It is no part of the engineer's business, to keep or observe the course of the steamers. At the moment of the collision, I saw no light on the schooner, but I think I saw one a little while before she sunk, but I will not be positive. I did not notice the schooner particularly, after the collision. I suppose the collision happened about forty-five miles from the lake-end of New Orleans. I am not familiar with the distances on the water. The mail boats generally, at that season of the year, reach Mobile about between eight and nine o'clock, A. M. The "St. Charles" left the railroad that evening, about a quarter to five o'clock A. M. I do not know how many persons were at the wheel of the "St. Charles," at the time of the collision. The reason I know there was no light on the "Ella," was because when I was forward, I saw the light on the schooner to the northward, and would

have seen the light on the "Ella," had there been one. It is customary for sailing vessels to have out a light when at anchor.

(Signed) JOHN H. SMITH.

Sworn to and subscribed before me, this 23d day of June, 1853.

(Signed) C. V. JONTE,
Justice of the Peace.

Transcript. (From the Minutes.) 1853, May Term. Stated Sessions. Monday, June 13th, 1853. In Admiralty.

E. G. ROGERS & Co. et al.
v.
STEAMER "St. CHARLES." } 6852.

And

JNO. HURLEY & Co. et al.
v.
STEAMER "ST. CHARLES." } 6872.

The Court met at 10 A. M. Present, Hon. Theo. H. McCaleb.

Judgment for Libellants, and reference to Admiralty Commissioner.

The Court having taken these cases under advisement, and carefully examined and considered the evidence and argument of counsel, and being satisfied that at the time of the occurrence of the collision, whereby the loss of *of* the libellants herein ensued, the Schooner "Ella," was anchored in a safe and proper place, out of the usual track of steamboats plying on Lake Ponchartrain; and that the said collision occurred solely by the carelessness and mismanagement of the officers and others in charge of the Steamboat "St. Charles." It is now ordered, and adjudged in view of the premises, that the libellants be entitled to recover of the claimants and sureties, the full amount of damage sustained by them, in consequence of said collision, and costs of suit, and that to this end, the Commissioner in Admiralty (Robert M. Lusher), prepare and submit to the Court for its approval, a report, showing the amount of damage sustained by the respective libellants herein.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMER "ST. CHARLES."

Admiralty Commissioner's Report of Damages, submitted and filed April 17th, 1854.

To the honorable the District Court of the United States for the Eastern District of Louisiana, in Admiralty sitting;

The undersigned Commissioner in Admiralty, appointed by the judgment of your honorable Court, to assess, and report the amount

of damage sustained by the respective libellants in the above entitled cases, has the honor now to report as follows:

In furtherance of the duty thus imposed on him, the undersigned has, at the instance of the libellants, and in presence also of the claimants, taken the testimony of Richard B. Clark, on behalf of E. G. Rogers & Co.; of A. F. Alfred, on behalf of Brooks and Randolph; of Thomas King, on behalf of Hurley & Co., libellants, as shippers respectively of parts of the cargo, laden on the Schooner "Ella," at the time of the collision; and that of J. B. Emerson, John Schernbeck, Captains Jas. Harrison and O. A. Jenkins, on behalf of Pooley, Nicol & Co., owners of the Schooner "Ella," and duly examined and considered the same, in connection with the invoices and other documents referred to by them, and appearing in the record.

First. Touching the value of the cargo on the Schooner "Ella," at the time of the accident, it satisfactorily appears, that its invoice value at the place of its shipment, and time of its loss, was as follows:

E. G. Rogers & Co.'s portion of the cargo, . .	$3,062 56
Brooks & Randolph's " " " . .	836 00
John Hurley & Co.'s " " " . .	1,368 98
	$5,267 60

In the respective amounts of $3,062 56 and $1,368 98, represented and claimed by E. G. Rogers & Co., and J. Hurley & Co., is not included the 10 per cent. interest claimed by said libellants, on the face of their invoices. This interest (in the language of one of the witnesses), is "added to cover the interest of money in case of loss," according to what another witness terms a mercantile custom or insurance rule." It goes beyond the general rule regulating damages in cases of collision, which allow the injured party an indemnity to the extent of the loss sustained. This loss will be fully covered by the allowance of the invoice value of the shipments (in which the shipper's profits and commission's are included), and legal interest thereon from the date of the collision.

A portion of the cargo in question, appears to have been saved in a damaged condition, and sold by R. B. Sykes, Auctioneer, for the nett sum of six hundred and forty-seven dollars and eleven cents. Owing to the difficulty of determining with any precision, what proportion of the articles thus sold, belonged to the respective invoices of the libellants; it has been agreed by the proctors of the parties, that said sum shall be deducted from the aggregate amount of the invoices; which is accordingly done in the following schedule:

Damages sustained by shippers of cargo on Schooner "Ella."

By E. G. Rogers & Co., ...	$3,062 56
Brooks & Randolph, ...	836 06
Jno. Hurley & Co., ...	1,368 98
	$5,267 60
Less nett amount of sales by auctioneer, . .	647 11
Actual loss allowable with 5% interest from the 5th day of February, 1853, ...	$4,620 49

Secondly. Touching the damages sustained by the libellants, Pooley, Nicol & Co., owners of the Schooner "Ella," from the collision, they may be classified as follows:

Necessary repairs to upper works and interior of Schooner "Ella," as set forth in doc't C, .	$1,749 34
Wages and board of hands during detention for repairs, ...	220 09
Sixty-three days demurrage is also claimed, . .	$1,969 43

The testimony taken on this point shows clearly, that the schooner was capable of earning from $20 to $25 per day freight, for the benefit of her owners, during the time of her detention, and under the principle laid down in the case of Williamson et al. *v.* Barrett, et al. (13th Howard, 411); the reasonable amount claimed by the libellants ($15 per day), is allowable, 63 days at $15, $945 00

Making the damages recoverable by Pooley, Nicol & Co., with 5% interest therein, from the 5th of Feb., 1853, ...	$2,914 43

It is proper here to remark that the owners of the "Ella" also claim an amount of from 12 to $1500 for recaulking and recoppering her, and that the testimony of J. B. Emerson and John Schernbeck has been offered to show that the collision rendered such a repair to her bottom necessary. There is no evidence, however, before the undersigned, that this repair has yet been made to her. This circumstance, coupled with the fact that the "Ella" (after the above repairs to her upper works were made) continued running with safety on her usual trips for several months, and without such repair to her bottom, compels him to conclude, notwithstanding the plausible explanation of Captain Schernbeck, that the collision caused no such serious damage to her hull as to require to be recaulked and recoppered.

With this report, the testimony, invoices, and documents produced

before the undersigned, and referred to herein, are respectfully submitted to your honors for such action as may be meet and just in the premises.

(Sig'd) ROBERT M. LUSHER,
Ady. Comm'r.

Memorandum. Amendment of Report.

To $2,914 43, herein allowed, add $900 00 (per decree of May 11th, 1854), making $3,814 43, with 5% interest, from February 5th, 1853, total damages allowed owners of Schooner "Ella."

(Signed) ROBT. M. LUSHER,
D'y Clerk of Court.

Testimony of A. F. Alfred on Invoices of Brooks & Randolph.

Taken for lib'ts, Brooks & Randolph, by Ad'y Comm'r, and annexed to Report.

A. F. Alfred, in behalf of Brooks & Randolph, says, That he is clerk for Brooks & Randolph; that he knows of the shipment of certain merchandise by Brooks & Randolph on board of the Schooner "Ella," on or about the 2d February, 1853.

The bill of lading filed herewith is genuine, and represents the goods shipped by B. & R. as above stated. The prices stated on the bills are the prices at which the goods were sold by the several passengers, named in "A list of Invoices of goods shipped by B. & R. on board the Schooner 'Ella,' Jan. 24th, 1853."

The cost of these goods to Brooks & R. is from 2½ to 5% cent. less than the prices stated in the bills filed herewith.

The gross am't of all said bills, with charges of drayage and insurance, is $836 06. The merchandise described in the several bills was purchased by the several parties named on the "List, &c., as above," and shipped upon their order to them. Such goods as B. & R. had, they supplied; others they purchased for the several purchasers named as above, and shipped to them.

(Signed) A. F. ALFRED.

Sworn to, and subscribed this 20th June, 1853, before,

(Signed) ROBT. M. LUSHER,
C'r.

List of Invoices of Brooks & Randolph.

Filed for said Lib'ts, May 31st, 1853. Referred to in testimony of A. F. Alfred, taken June 20th, 1853.

A List of Invoices of Goods Shipped by Brooks & Randolph on board of the Schooner "Ella," Jan'y 24th, 1853.

A. W. Nicholson's Bill, ...	$93 38
O. B. Falconer's Bill, ...	47 53

J. C. Curley's Bill,	18 50
Amos Ross's Bill,	24 85
A. J. Lambiton & Co.'s Bills,	651 80
	$836 06

(Signed) A. F. ALFRED.

The following is a list as per bill lading:

A. W. Nicholson.			
2 Blls. Molasses,	$20		
5 do. Potatoes,	7 50		
5 Kegs Butter,	35 00		
1 Sack Coffee,	15 68		
Drayage,	75		
	$78 93	Schooner "Ella."	
1 Chest Tea, $6 50			
1 do. do. 7 50			
	14 00		
	92 93	Schooner "Ella."	
Insurance included in B. Lading,	45		
	$93 38		
A. J. L. & Co.			
1 Case Segars,	$109 50	Bill rec'd.	
1 Box Tumblers,			
1 Roll Carpeting,	13 20		
1 Bale Wall-paper,	11 50		
1 Box Glass,	3 75		
1 Hobby-Horse,	3 00		
D. & Alling's Bill,	68 00	Schooner "Ella."	
S. & Searing's Bill,	233 40		
B. & Randolph's,	203 45		
	$651 80		
O. B. F.			
1 Bale Mdze., 1 Package,	$47 53	Schooner "Ella."	
J. C. Crosby's,			
Bill Mdze.,	18 50	Schooner "Ella."	
Amos Ross,			
Bill Mdze.,	24 85	Schooner "Ella."	

(Signed) A. F. ALFRED.

NEW ORLEANS, Febr'y 3d, 1853.

Dray, No.

Received, in good order, from Brooks & Randolph, No. 26 New Levee Street, on board Schooner "Ella."

MARKS.	PACKAGES.
A. W. N. Warrington.	2 kegs Tea.

(Signed) H. KAHRS.

(Signed) A. F. ALFRED.

Shipped in good order, and well conditioned, by Brooks & Randolph, for acct. and risk of whom it may concern, on board the good Schooner "Ella," whereof Schernbeck is master for the present voyage, now lying in the Port of New Orleans, and bound for the Port of Warrington, the following articles, described below, which are to be delivered without delay, in the like good order and condition, at the Port of Warrington (the dangers of the river and fire only excepted), unto as per marks below, or to their assigns, he or they paying freight for the said mdze. at the rate of

In witness whereof, the master or clerk of the said boat hath affirmed to 3 bills of lading, all of this tenor and date; one of which being accomplished, the other to stand void.

Dated at NEW ORLEANS, the 2d day of Feb'y, 1853.

MARKS.	ARTICLES.	
A. J. L. & Co.,	1 One Case Segars,	1 Roll Carpeting.
Warrington, Fla.,	1 One Box Tumblers,	1 Bale Wall-Paper.
	2 Two Trunks Mdze.,	½ Half Box Tobacco.
	1 One Box Tom. Catsup,	1 Box Castile Soap.
	2 Two " White Wine,	1 " Glass.
	1 One " Canary Seed,	3 Kegs Butter.
	1 One " Pkg. Bedcords,	1 Box Medicine.
		1 Hobby Horse.
	1 One Blls. Beans,	1 Bil. H. Cin.
	10 Ten Boxes Codfish,	10 Bals. I & Ay.
A. W. N.,	5 Five Blls. Potatoes.	
	5 Five Kegs Butter.	
	1 One Sack Coffee.	
	2 Two Blls. Molasses.	
J. C. Crosby,	5 Five Sacks Corn.	
	3 Five O. Oats.	
	2 Two " Bran.	
Amos Ross,	20 Twenty Sacks Corn.	
O. B. F.,	1 One Bale Mdze.	
Woolsey,	1 One Small Pkg. Tinware.	

(Signed) JOHN SCHERNBECK.

Testimony of R. B. Clark on the Invoices of E. G. Rogers & Co.

Taken for said Libellants, Jan'y 11th, 1854, by Admiralty Comm'r, and ret'd with Comm'rs report, and filed April 17th, 1854.

Richard B. Clark, a witness for the libellants above, being duly sworn, deposes and says:

I am a clerk in the house of lib'ts, and was in February, 1853. On examining the invoices of goods pr. Schooner "Ella," marked A, B, C, witness says, that all the goods therein were shipped on the Schooner "Ella," about the 1st or 2d February, 1853. He superintended the shipment himself, made out the bills of lading, and got them signed by the captain or Mr. Hurley & Co. Witness can't remember exactly by which; the bills will show.

The prices charged in the invoices are all fair, and exactly those paid by the libellants for the articles, with the exception of the 4 barrels of mullet in A., which was a consignment to lib'ts, and which they shipped at what they deemed a fair market price at this port. Everything in the three invoices was bought here in N. Orleans, except the mullet just spoken of.

The aggregate of the three invoices is $3,062 56. The amount claimed in the libel, namely, $3,310 00, arises from adding 10% — the usual mercantile custom—are insurance rule—to the invoice prices in the respective invoices.

Invoice A insured for	$32 00
" B " "	304 00
" C " "	2974 00
Making up the amount in the libel, . . .	$3310 00

This is the amount claimed by the libellants of the Insurance Companies, and which they were paid.

Cross-examined.

Witness is not the purchasing clerk of E. G. Rogers & Co. He did not purchase any of these particular goods. Witness knows that checks were given by the libellants for the same amounts that are stated in the invoices to the respective parties of whom purchases were made, that is

Invoice C, the different checks in the aggregate were for	$2639 39
" B, ...	271 64

A was a consignment.

Witness on examining the actual sales of Sykes and Co. says that goods bearing the mark "S. S. & Co." were the only ones shipped by libellants of those saved. He remarks, however, on seeing this mark opposite 108 bls. of flour, that the libellants shipped with this

mark only 100 barrels (S. S. & Co) and 5 barrels marked T. J. Early (as shown in Invoices B and C).

While identifying "S. S. & Co." as libellants mark, witness cannot say that others may not have used the same mark in shipping, which however is very improbable. Some of those stated as bearing "no mark" may also have been shipped by libellants; but witness cannot state positively which were, without an inspection of all the invoices of shipments on the "Ella."

(Signed) RICHARD B. CLARK.

Sworn to and subscribed at New Orleans this 11th day of January, 1854, before

(Signed) ROBT. M. LUSHER, Cr.

Agreement.

By the parties: Thos. R. Wolfe, Esq. for Rodgers & Co. and Brooks and Randolph; Thos. Hunton, Esq., for Hurley & Co., and T. L. Bayne, Esq., for Steamer "St. Charles," present:

It is understood that the libellants for cargo, Rogers & Co., Brooks and Randolph, and Hurley & Co., admit a deduction of $647 11 from the amount to be allowed to them as claimed in their libels.

Attest: (Signed) ROBT. M. LUSHER, Cr. in Admr'y.

Invoices A, B, and C.

Referred to in the testimony of R. B. Clark for libellants Rogers & Co., and filed for said libellants May 31st, 1853.

A.

Invoice, four barrels mullet, purchased by E. G. Rogers & Co., and shipped per Schooner "Ella" for acct. of Messrs. Simmons, Stewart & Co. S. S. & Co.

4 bbls. mullet, $7 00, ...	28 00	
Drayage, ...	40	
		28 40
Commissions, ...		71
Ins. 1½ per cent.		48
		$29 59

New Orleans, February 1st, 1853.

B.

Invoice sundries purchased by E. G. Rogers & Co., and shipped per Schooner "Ella," for acct. of Messrs. Simmons, Stewart & Co.

T. J. Early,	5 bbls. flour,		@$4 62½	23 13
	4 " whiskey,	157½ g.	20½c	32 28
	2 " Dexter's,	84½	24c	20 28
	1 cask Malaga wine,	34 g.	65c	22 10
	1 bbl Am. brandy,	41½ g.	30c	12 45
	1 " peach,	37 g.	10c	46 25
	2 bags Rio coffee,	328 lbs.	9½c	31 16
	5 boxes cheese,	231 lbs.	9c	20 79
	1 " assd. candy,	32½	16c	5 20
	1 bbl. butter cracker bbl.,	69 lbs.	5c	3 70
	1 keg 16 lemon syrup,	20 g.	1 35	29 00
	3 boxes raisins,		3 50	10 50
	1 bbl. gin,	40 g.	30c	12 00
	Drayage,			2 80
				$271 64
	Commissions,			6 79
	Ins. 1½ per cent.			4 56
				$282 99

New Orleans, February, 1853.

C.

Invoice, sundries purchased by E. G. Rogers & Co., and shipped per Sch. "Ella," for acct. of Messrs. Simmons, Stewart & Co. S. S. & Co.

100 bags of salt,		@85c	85 00
20 barrels whiskey,	804½ g.	20½c	164 92
20 " Dexters,	818 g.	24c	196 32
10 " Olivers,	407 g.	22c	91 57
8 " cider,		$7 00	56 00
4 " butter crackers,	280 lbs.	5c	15 00
2 " sugar,	141	7c	10 37
4 " onions,		2 25	9 00
4 " vinegar,		3 00	12 00
6½ " duck wheat,		16½	12 00
4 bags Java coffee,	372	14c	52 08
5 kegs of 5 galls. each		8c	5 00
5 " 10 " "		10c	6 25
1 gross pint bottles,			4 00
50 bags Rio coffee,	8175 lbs.	9½s	776 52
1 teirce rice,	617	4⅜c	26 99
100 barrels flour,		4 62½	462 50
1 34 in. brown bellows,			18 00
1 M. H. anvil,	129 lbs.	½	16 13
1 C. K. vice,	66 lbs.	½	8 25
1 screw plate,		20c	2 50

30 barrels molasses,			24½c	233 89
2 boxes tobacco, "Jeff Davis,"	208 lbs.		20c	20 80
4 " " "Rutledge,"	398 lbs.		15c	59 70
2 " " "Lygon,"	227 lbs.		20c	45 40
2 " " "Sidonia"	207 lbs.		25c	51 75
5 barrels No. 3 mackerel,		8 50		42 50
			5¾	28 75
Drayage,				22 60
				$2639 39
Commission,				65 98
Ins. 1½ per cent.				44 61
				$2749 98

NEW ORLEANS, 1st February, 1853.

Testimony of Thomas King on Bill or Invoice marked O, of Lib'ts, Hurley & Co.

Taken for said libellants, Jan'ry 11th, 1854, by Admiralty Commissioner, and ret'd with Comm'rs Report, and filed April 17th, 1854.

Thomas King, being duly sworn, deposes, that he was a clerk of lib'ts in Jan'y, Feb'ry, 1853.

On examining Exhibit "O," witness states, that all the goods therein were shipped, and of their price correct — in every respect.

The Insurance Company paid Hurley & Co. $1505 on acc't of the loss of these goods shipped.

Cross-examined.

Witness was sometimes purchasing clerk at that time; knows that the prices were paid, from receipts of the parties in the store, and he paid out some of the bills himself.

The commissions, amounting to 462, &c., in the body of the bill, are commissions charged by Hurley & Co., for purchasing the goods of the several parties named in the invoice.

Direct.

These commissions are always charged by commission merchants, in making purchases for parties, at the rate of 2½%, and 10% is added to cover the interest of money in case of loss.

(Signed) THOMAS KING.

(Signed) ROB'T M. LUSHER, C'r.

Exhibit O, annexed to libel of Hurley & Co.

Referred to in the testimony of Thos. King. Filed for Hurley & Co., May 24th, 1853.

Goods shipped by John Hurley & Co., on board Sch'r "Ella," for Pensacola:

Cater & Mims.			pr "Ella."	
16 barrels flour,		4 70	75 20	
6 " " potatoes,		1 40	8 40	
2 kegs butter,	58	23	13 34	
1 cask shoulders,	849	8	67 92	
bales may,	2015	20	20 15	
Com'rs, 4 62; Ins., 1 08; dray, 2 30,			8 00	
				193 01

James Merron.			pr "Ella."	
1 tierce shoulders,	349	8½	28 79	
25 sacks corn,	50 50/100	52	26 47	
2 barrels fine flour,		4 30	8 60	
2 half " "		3 00	6 00	
½ doz. corn brooms,			1 50	
9 starch,	9	8	72	
10 washing soda,	10	6	60	
com., 1 82; ins., 45; dray, 1 20,			3 47	

Arcadia Manuf. & Co.,			pr "Ella."	
1 bale Ky. bagging twine,	25½	15	3 83	
2 reams wrapping paper,		3	6 00	
8 bales hay,	2790	20	27 90	
1 barrel m. pork,			16 75	
1 " lard oil,	42½	90	38 25	
5 barrels molasses,	213	25½	54 32	
com's, 3 68; ins., 86; dray, 2 00,			6 54	
				153 59

Crungler, Batchelder, & Co.			pr "Ella."	
100 sack corn,	205 50/100	52	107 05	
com's, 5 35; ins., 67; dray, 3 20,			9 22	
				116 28

Henry Hyer.			pr "Ella."	
8 sacks Rio coffee,	1293	9½	122 84	
25 " white corn,	51	52	26 52	
8 barrels Ohio flour,		4 70	37 60	
com's, 4 67; ins., 1 00; dray, 1 60,			7 37	
				194 33

Jasper Strong.			pr "Ella."	
25 sacks corn,	49	52	25 49	
20 " oats,	46⅝	48	22 35	
10 " bran,	1060	1⅛	11 66	
6 bales hay,	2335	20	23 35	
com's, 2 07; ins., 49; dray, 2 20,			4 76	

E. W. Dorr,			per "Ella."		
Lardner's Treatise on Steam Engine,			1 50		
Haswell's pocket book,			1 25		
Arnott's Elements of Physic,			2 50		
1 cask shoulders,	810	8	64 80		
1 " rice,	666	$4\frac{3}{16}$	28 64		
25 sacks corn,	$49\frac{36}{80}$	52	25 82		
1 keg Goshen butter,	98	32	31 36		
1 hhd. sugar,	975	$5\frac{3}{4}$	56 06		
com's, 5 30; ins., 1 22; dray, 1 00,			8 32		
				220	25
L. M. Attaway,	99		per "Ella."		
50 sacks corn,	899	52	51 58		
1 cask sides,	849	$8\frac{3}{4}$	74 29		
1 bbl. land,	230	$10\frac{1}{2}$	24 15		
com's, 3 75; ins., 88; dray, 2 00,			6 63		
				156	65
Manuel del Barco.			pr "Ella."		
1 cask wine,			23 00		
com's, 58; ins., 14; dray, 30.					
				24	02
M. P. Ingraham.			pr "Ella."		
1 cask rice,	656	$4\frac{3}{16}$	28 20		
10 barrels potatoes,		1 40	14 00		
5 " onions,		1 75	8 75		
10 boxes soap,	500	44	21 25		
1 barrel lard,	221	$10\frac{1}{2}$	23 20		
5 " pilot bread,	314	$3\frac{1}{2}$	11 45		
1 cask hard coal,			6 50		
1 " soft "			4 75		
com's, 2 95; ins., 70; dray, 1 80,			5 45		
				123	55
3 sheets Russia iron,	30	16	4 80		
dray, &c.,			30		
				5	10
John Schernbeck.			pr "Ella."		
10 barrels apples,		1 75	17 50		
com's, 44; ins., 10; dray, 40,			94		
				18	44
				1368	98
		10% added,		136	89
				1505	87

NEW ORLEANS, 3 February, '53.

Account of Auctioneer's Sales (for $647 11), *of merchandise saved from wreck of Schooner "Ella." Filed in evidence for libellants May* 31*st*, 1853.

Sold at auction by R. B. Sykes, Auctioneer, by order of Wm. C. Matthews of Sun Mutual Insurance Co., for account of whom it may concern, the following articles, merchandise saved from wreck of Schooner "Ella."

1853.

Feb'y 23,	Barrancas, 6 boxes medicine, 3 75,	22 50
"	no mark, 2 " and 1 bbl. flasks,	
"	" 1 box assorted syrup,	2 50
"	" 1 " tumblers,	2 00
"	S. S. & Co., 21 bbls. molasses, 7 75,	162 75
"	Gardner, 2 kegs syrup,	5 50
"	no mark, 5 casks coal, 4 25	21 25
"	" 1 anvil,	6 00
"	S. S. & Co., 1 bellows,	6 50
"	" 9 bbls. fish, 5 37½,	48 37
"	" 3 half bbls. do., 4 00,	12 00
"	no mark, 8 boxes soap,	9 60
"	" 1 cask meat,	14 00
"	A. C. F., 1 bbl. mess pork,	14 25
"	Pexter, 3 " whiskey, 7 62½	22 87
"	J. W. 1 kettle,	1 75
"	no mark, 1 lot iron,	30
"	" 2 cheeses, 2 50,	5 00
"	S. S. & Co., 8 boxes tobacco, 843, 6¾,	56 90
"	no mark, 1 vice,	6 00
"	" 19 p's soap, 21,	3 99
"	A. W. W., 4 kegs butter, 3 75	15 00
"	no mark, 1 cask alcohol,	1 50
"	" 1 keg pigs feet,	75
"	" 1 bag bottles,	30
"	" 1 table,	5 00
"	S. S. & Co., 108 bbls. flour, and 1 half bbl. 190,	206 15
"	no mark, 1 shaft,	15 50
24	" 8 bbls. crackers, 5,	50
		670 63

Charges.

Drayage on crackers,	40
Advertising,	3 00

State duty and com., 3⅛, . .	20 12	23 52
Nett proceeds		$647 11

E. E.

NEW ORLEANS, Feb'y 25th, 1853.

R. B. SYKES,
ROB'T ELLIS.

Testimony of Jno. B. Emerson, Jas. Harrison, O. A. Jenkins, and Jno. Schernbeck.

Taken on behalf of libellants, Pooley, Nicol & Co., and returned with the Admiralty Commissioner's Report, and filed April 17th, 1854.

Jno. Brown Emerson, a witness for the libellants above, being sworn, deposes that he went over to where the Schooner "Ella" was sunk, after the collision herein; witness was sent over as agent of the underwitness, to raise the "Ella," or do what was best. Witness inspected her individually, and a second time with another person. Witness thought from her condition, that it was necessary to haul her out, and recaulk and recopper her, and so reported. In his judgment, it would have cost 12 to $1,500, to make these repairs some time ago; that is about the time of collision. It would cost more now from the increased price of materials. Witness has been in that business of shipwright, repairing, &c., herself.

Cross-examination.

Witness did make it his business to examine the "Ella," with the view of seeing what her repair would cost.

Direct examination resumed.

In the estimate of 12 to $1,500, he included only the cost of hauling out, or docking, recaulking, and coppering.

On hearing Bill C, read, and witness says that no items in this bill are included in the estimate made by witness.

Cross-examination resumed.

Witness does not know what the items in Bill C, for $600 carpentry is for; presumes it was for repairing the work above water. He knows that it was not included in his estimate, because the work was not done at the time the other repairs were made, hauling, recaulking, and coppering; and he has been informed it has not been done yet. Witness has not seen the "Ella," he thinks, for four or five weeks; she is engaged in trade now he believes. Has seen her

coming in and going out at different times within the last 3 or 4 months he thinks.

(Signed) ROB'T M. LUSHER,
Cr. &c.

(Signed) J. B. EMERSON.

Capt. Jas. Harrison, sworn, deposes that he has known the "Ella" ever since she was built; in February last she was engaged in the Pensacola trade.

The government used to pay her from 40 to $50 per day, demurrage. Witness thinks that $25 a day, would be a reasonable demurrage for her detention, while having a full crew on board; should not charge anything less than this. Her value during the time the repairs were making, was at least $25 per day, demurrage.

Cross-examined.

In the ordinary trade in which the "Ella" was engaged, witness cannot say whether she earned $25 per day; sometimes such a vessel does and sometimes not. The expenses of such a vessel are large, and for victualling, manning, hands, wages, and provisions. He estimated $25 per day, because these expenses just alluded to, are large on such a vessel, and because of her capacity to earn freight. Witness does not know how many hands were on the "Ella," during the repairs, but thinks she required 7 or 8 all told. The expenses of such a vessel are sometimes as great when she is lying at anchor, as when she is running; as when she has a full crew on board.

(Signed) R. M. LUSHER,
Com'r in Admiralty.

(Signed) JAMES HARRISON.

O. A. Jenkins, being duly sworn, deposes that he knows the Schooner "Ella," and has known her for some time. When she was making repairs after the collision, witness thinks that her reasonable demurrage would be 25 to $30 per day. Her services were certainly worth that. Witness is in the same trade in which the "Ella" was engaged when she met with the accident last spring, and he has a knowledge of the expenses and earnings of such a vessel in that trade.

Cross-examined.

Did not see the "Ella" when she was actually undergoing repairs. Don't know that there were any hands on her at the time of these repairs, as he did not see her.

Witness' statement of demurrage, is for her value to her owners when she is running, fully manned and equipped. A vessel of herself, if laid up, is worth nothing.

(Signed) O. A. JENKINS.

Direct examination resumed.

By his last remark, witness means that a vessel when laid up, earns nothing for her owners; but on the contrary, her services would be worth 25 to $30, if she was running.

(Signed) R. M. LUSHER,
Commissioner in Admiralty.

(Signed) O. A. JENKINS.

John Schernbeck, sworn, deposes that he was master of the "Ella," at the time of the collision. We had a full crew on board, at the time of the collision, entirely sufficient for the purposes of the vessel. He raised the vessel, and brought them all here.

Examining document C, states that the item of $600 carpenter's work, was for work done above the water on her upper works. This has been paid by Pooley, Nicol & Co. Witness knows all the items in the bill were paid by the owners (except the last item, for demurrage), and were necessary repairs and expenses resulting from the damage done by the collision.

When the "Ella" first sunk, she got a great deal of dirt in her corn, oats, &c., which kept her from leaking. About a month after she commenced running, and after removal of this dirt, she commenced leaking, and has been leaking ever since. Witness thinks will be necessary to haul her up, and dock her, and caulk her to stop the leaks, and to take the copper off, and replace it.

Her leakage arose from the great strain in raising her, and was a consequence of the collision, as she was tight before the accident. Witness on inquiring what would be the cost of thus repairing her at the Dock Yard, on the other side, was told that it would be 12 to $1500; they could tell better from seeing her. Witness thinks that it will cost this to repair her, from his past knowledge of her recoppering, &c., a year ago last August. Witness finds it necessary to put her in dock; she has to be pumped constantly, and he calculates to do it after the next trip.

Witness says that in bill C, none of the items are for expenses to her bottom, or included in his above estimate of the cost of repairing her.

Witness on examining bill of goods, shipped by John Hurley and Co., cannot particularise, but he knows that he received a lot of goods from Hurley & Co. By the laying up of the Schooner "Ella," for repairs, witness considers that her owners lost from 25 to $30 per day, which he considers a reasonable demurrage. She was laid up for repairs from the 5th of February, to the 9th of April, 1853, about 63 days, witness calculates.

A good deal of strain had to be put on the "Ella" to get her up, as the cargo was in her, but they raised her with care. He supposes that the shock from the collision with the "St. Charles," had the

effect of opening the seams, and raising her with the masts in had the effect of opening them more.

Cross-examined.

The "Ella" first commenced running after her repairs, on the 11th of April, 1853, and has been running ever since.

Such vessels are hauled up for repairs, customarily once every season; those that are not coppered are hauled up every six months. They are not always hauled up and put in dock, but they are put in dock wherever there are docks. Vessels not coppered, generally run till they spring a leak, and are then hauled up; those coppered are not hauled up so often. The "Ella" was hauled up in August, 1852, for repairs, and was then repaired at a cost of $3000; the "Ella" is proposed to be hauled up again after the next trip. We raised the "Ella" with such part of her cargo on board as could not be got out of her; the deck was clear but half her hold was full; two vessels were engaged to raise her; another also came; she was raised by running supports under her—purchases, tackles, &c.,—and dragging her into shoal water till her deck was out, so that they could pump her out; after she was up, she floated herself; she was then taken in tow and brought to the canal. There is a pretty heavy strain on a vessel when moving her with a part of her cargo in her; the strain affects the whole vessel.

Being asked whether he knows that the shock of the "St. Charles" started the seams of the hull of the vessel under water, witness says, he does not know; doesn't believe that these seams could have been started by the strain in raising her, as the chains bore bodily on her, and there was no place where there could be strain enough to start her seams. During the 63 days of repairs, witness had all his seven men but one, six including witness, on board employed; they were employed in helping to raise the vessel at first, in cleaning her out afterwards, and in helping to rig her up.

Direct examination resumed.

These men were in the pay of the vessel all the time during these 63 days; it is my opinion (objected to), that the starting of the seams under water, was caused by the shock of the collision; if it had not been for this accident, it would not have been necessary to haul out the "Ella" for repairs, for a couple of years; she might have run 3 or 4 years from August, 1852, tho' it might have been necessary to haul her up meanwhile, once or twice, to see if her coppering needed repairs.

(Signed) R. M. LUSHER,
Cr. in Ad'y

(Signed) JOHN SCHERNBECK.

Document C.

Referred to in testimony of J. B. Emerson, and Jno. Schernbeck, ret'd with Ad'y Commr's Report, and filed April 17th, 1854.

Schr. "Ella" to sundries, from February 5th to April 9th, '53, caused by repairing damages sustained from Steamer "St. Charles:"

Stove and tinware, as per bill receipted,	$32 25
Painting,	30 00
Ship carpenters, as per their receipt,	600 00
Water casks, as per receipt,	7 00
Plumbers' bill for pumps, &c., receipted,	21 32
Cabin furniture, as per bill,	93 74
Blacksmith bill,	7 50
Sailmaker's "	332 96
Paid Baguie for ship chandlery, as per bill,	251 78
Paid for rope and provisions, as per bill,	175 20
Anchors and shackles, as per bill,	106 84
Paid Canal Co. fee for repairing, toll, &c., as per bill,	90 75
Cash paid for hands' wages, their board, &c.,	220 09
Sixty-three days' demurrage, at $10 per day,	945 00
	2914 43

Transcript.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
STEAMBOAT "ST. CHARLES."

Exceptions of Pooley, Nicol & Co., to Commissioners' Report. Filed April 21, 1854.

And now come the said libellants, and except to the Commissioner's Report filed herein on the 17th instant, and assign for their exception the following grounds:

First. Because the Commissioner failed allow the said libellants the sum of $1500 damages, sustained by libellants in consequence of injury to hull of the Schr. "Ella," by the collision aforesaid.

Wherefore, libellants pray, that the said Report be so amended as to allow the said libellants the said sum of $1500 with interest, as damages by them sustained, together with their costs, &c.

(Signed) J. A. MAYBIN,
(Signed) THOS. HUNTON.
(Signed) For Libellants.

Transcript.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMBOAT "ST. CHARLES."

Motion of Pooley, Nicol & Co., to amend Commis'rs Report. Presented and filed April 21st, 1854.

Maybin and Hunton, Proctors for libellants, suggesting to the Court that the libellants paid, on the 24th Feb'y, 1853, the sum of $900 to the Captains of the Schooners "Pascagoula" and "Isbon," for services rendered by the said schooners in raising, saving, and bringing to the Basin, in this city, the Schooner "Ella," her materials, and cargo, as will appear from the annexed receipt, do now move, that the Commissioner's Report, filed herein on the 17th instant, be so amended as to allow libellants, Pooley, Nicol & Co., the said sum of $900, with interest from the 24th Feb'ry, 1853, as additional damages sustained by said libellants.

Transcript from the Minutes. February Term, 1854. Stated Sessions. Saturday, April 22d, 1854.

The Court met at 9½ A. M. Present, Hon. T. H. McCaleb.
In Admiralty.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
STEAMER "ST. CHARLES."

6852.
6872.

Order fixing hearing for 26th.

The Admiralty Commissioner's Report of damages herein, having been heretofore filed in Court, and, after due notice to all the parties in interest, fixed for hearing to-day, and Pooley, Nicol & Co., owners of the Schooner "Ella," having filed an application for the amendment of the same, and also exceptions to a disallowance made in said Report: on motion of J. A. Maybin, Esq., of counsel for said libellants, T. L. Bayne, Esq., of counsel for the claimants, assenting, it is ordered that the hearing of said report, exceptions, &c., be continued until Wednesday next, the 26th inst.

ROGERS & Co. et al., and
HURLEY & Co. et al.,
v.
STEAMER "ST. CHARLES."

Exceptions of Claimants to Commissioner's Report. Filed April 26th, 1854.

And now come claimants of the Steamer "St. Charles," tackle, &c., and except to the Commissioner's Report, on the ground follow-

ing: That in charging claimants for repairs, an allowance should be made of one-third new for old, or such an allowance of the increased value of said schooner, after the making of said repairs; that the charges for carpenter's work and other items, are not stated or proved in detail; that claimants cannot be charged upon a bill so general in its character; that the demurrage is improperly charged, and if any charge is allowable, that the charge here made is excessive.

That the charge for seamen's wages, and board of hands during detention for repairs, is illegal and improper. Claimants and respondents respectfully pray, that the Report may be amended in accordance with the exceptions herein filed, and for all general and equitable relief.

(Signed) CLARKE & BAYNE,
Proctors, &c.

Transcript.

ROGERS & Co., et al.,
and HURLEY & Co., et al.,
v.
STEAMER "ST. CHARLES."

Bill of 900 00.

Annexed to Motion of Pooley, Nichol, & Co., to amend Commissioner's Report, and filed April 21st, 1854.

NEW ORLEANS, February 22d, 1853.

Sun Mutual Insurance Co.,

To Schooners "Pascagoula" and "Isbon," dr. For services rendered in raising the Schooner "Ella," at Cat Island, and towing her into the Port of New Orleans, ... $1200 00
Deduct, . . . 300 00

$900 00

Feb. 24th, 1853, received payment.
(Signed) ROB'T PETERSON.
(Signed) GEORGE BELFOUR.

NEW ORLEANS, Feb. 24th, 1853.

Received of L. Matthews, for whom it may concern, nine hundred dollars in full, for services and assistance in raising and saving, and bringing to the Basin, the Schooner "Ella," and materials with cargo which was sunk near Cat Island, on the fifth day of this month, at night, by the Steamboat "St. Charles," bound from New Orleans to Mobile.

(Signed) GEORGE BELFOUR,
Cap. of the Schooner Pascagoula.

(Signed) ROBT. PETERSON,
Capt. of Schooner Isbon.

Transcript.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The Steamboat "ST. CHARLES."

Testimony of James Edwards and J. B. Emerson (for libellants), Pooley, Nichol & Co., on claim of $900 00, *for raising Schooner "Ella."*

Taken down in Court, and filed April 26th, 1854. Jas. Edwards, a witness for the said libellants, sworn, deposes.

(Examined by Mr. Maybin, for libellants.)

On examining Docket annexed to motion, Pooley, Nichol & Co., to amend the Ady. Cr.'s report, witness states that this claim of $900 for raising, &c., the Schooner "Ella," was by Mr. L. Matthews, agent of the Sun Mutual Insurance Co., for the services therein detailed.

Cross-examined by Mr. Bayne, for claimants.

Witness was, at the time of the payment of this bill, Cashier of the Sun Mutual Insurance Office. Why it was paid by this office, instead of the Libellants, was because (as witness presumes) this office had a large interest in the cargo and hull of the schooner which insured. I believe that the vessel was not abandoned to the office; it was not, that I know of. If there had been an abandonment, I should have known it. I known it. I know that there was a compromise between the assured (Hurley & Co.; I believe, and also, I think, are agents of Pooley, Nichol & Co.), though I am not certain of this agency. This compromise was made in March, 1853; at least, this is the time the payment was made. The compromise could not have been made before an estimate for the repairs was made.

Being asked whether those suits of Hurley & Co., and Pooley, Nichol & Co., are prosecuted for the Insurance Cos., witness says he believes that they have an interest in them. I believe, and also, I think, are agents of Pooley, Nicol & Co.), though I am not certain of this agency. This compromise was made in March, 1853, at this agency. This compromise was made in March, 1853, at least, this is the *the* time the payment was made. The compromise could not have been made before an estimate for the repairs was made. Being asked whether those suits of Hurley & Co., and Nicol & Co., are prosecuted for the Insurance Cos., witness says, he believes that they have an interest in them. I believe that the suit for the Schooner "Ella" is prosecuted for the benefit of the Insurance Co. I don't know any-

thing about the repairs of the vessel, and whether an allowance was made of new for old. It is customary, when a vessel has received damage, and the repairs have been completed, so as to put her in the same order and condition as she was in before the damage, to deduct one third new for old, it being considered that the vessel is worth one-third more to the owner. This allowance applies, I believe, in repairs to the hull—I don't know that it does to the upper works, &c.

Examined by Mr. Thomas Hunton, for libellants.

There was no deduction of one-third in the settlement or compromise between the libellants, Pooley, Nicol & Co., and the office. The Sun Mutual Insurance has an interest in this suit; but I do not mean to say that Pooley, Nicol & Co. have no interest in it; on the contrary, I believe that they have.

By Mr. Maybin, for libellants.

I don't know that the Schooner "Ella" was put in the same position as she was in before the collision, so as to justify the allowance of one-third.

Cross-examined by Mr. Bayne, for claimants.

I know that no allowance was made in the compromise of new for old, because the repairs were estimated at $2500, and the office paid this full amount. This amount was based on reports and estimates of surveys. I don't know that any written estimates were ever filed in the office, and the parties, on being paid this amount, agreed to repair the vessel themselves. I don't know what specific interest Pooley, Nicol & Co., have in this suit. I don't know that there was any other cargo on the "Ella" than that sued for in the suits herein. I have understood there was.

By Mr. Maybin for libellants.

In my opinion, the charge of $900, for raising, &c., is reasonable, considering the amount of risk, and the value of the vessel and cargo in her.

By Mr. Bayne, for claimants.

I don't know, that is, I did not see this service rendered. I don't know whether or not, in making up this estimate of $2500, the allowance of new for old was made.

J. B. Emerson, also a witness for claimants, having been sworn and examined in Court, deposes:

(Examined by Mr. Maybin.)

I have seen the bill of $900 paid by Mr. Mathews for raising, &c., the "Ella." I was present when the service was rendered—sent over there by the "Sun Office." I know that the services were rendered by the persons whose names appear on the bill. The charge of $900 I consider reasonable for the services. I had estimated such services to be worth $1000. I consider reasonable for the services. I had estimated such services to be worth $1000. I am experienced in such matters.

By Mr. Bayne.

It was some time last spring that I was sent over—in February, I think. I came over with the vessel. I saw the Schooner "Ella" after she was repaired. Being asked whether it is customary in repairing vessels as the "Ella" was repaired, to make an allowance of one-third new for old, witness says, it has always been customary in my experience to do so, where repairs are made away from home, and for the benefit of the underwriters, in which case, the mechanics' bills, &c., are always taken to an adjuster's office, and a deduction of one-third new for old is made from these bills—that is, the items of materials; no deduction is made for labor, anchors, chains, and such things. The repairs on the "Ella" consisted in putting in new timbers, 20 ft. in length, on her sides; building new galleys, rails partially, &c.; they were mostly on her rigging, sails, and cabin furniture, which were the heaviest items of expense, above water.

The item of $600 in Doc't C, is for wood-work on the upper parts of the vessel.

By Mr. Maybin.

In the items of sails and rigging, a deduction of one-third is made.

Transcript. (From the minutes.) February Term, 1854; Stated Session; Wednesday April 26th, 1854.

The Court met at 10 A. M. Present, Hon. T. H. McCaleb.
In Admiralty.

E. G. ROGERS & Co. et al., and JOHN HURLEY & Co, et al., 6852. 6872.
v.
STEAMER "ST. CHARLES."

Hearing and submission of Commissioner's Report. The Admiralty Commissioner's Report herein, having been called up for hearing, on the motion and exceptions of Pooley, Nicol and Co., and the

exceptions (filed this day), of the owners of the "St'r Charles." Respondents, J. A. Maybin and Thos. Hunton, Esq's, appeared for Pooley, Nicol & Co., and T. L. Bayne, Esq., for the said respondents.

1st. On the motion to increase the allowance made to Pooley, Nicol & Co., by the addition of $900, for the expense of raising, &c., the Schooner "Ella," the oral testimony of Jas. Edwards and J. B. Emerson was heard and taken down in writing, and filed (claimants' objections to the taking of testimony on such point, on the ground that no such claim is set forth in the libel being reserved. On motion of T. Hunton, Esq., for libellants, it was then ordered (reserving respondents' rights), that he have leave to amend the libel of Pooley, Nicol & Co., by setting forth a claim of $4,000 damages, in lieu of $2,500 damages.

2. On the exceptions of Pooley, Nicol & Co., to the disallowance of $1,500, for damages to the bottom of the Schooner "Ella;" the testimony of John Schernbeck and J. B. Emmerson, annexed to the Commissioner's Report, was offered and read in evidence. After argument of counsel, the Court took the motion to amend, and all the exceptions, and the report, under advisement.

Transcript. (From the Minutes.) February Term, 1854; Stated Sessions; Thursday, May 11th, 1854.

The Court met at 10 A. M. Present, Hon. T. H. McCaleb.
In Admiralty.

E. G. ROGERS & Co. et al., and JOHN HURLEY & Co. et al., v. STEAMER "ST. CHARLES." } 6852. 6872.

Final Decree.

The Court having taken under advisement and carefully reviewed the evidence herein, as affecting the exceptions, as well of Pooley, Nicol & Co., as of the claimants and respondents to the Admiralty Commissioner's Report, and being satisfied that the exceptions of the said libellants, owners of the Schooner "Ella," are not supported by the evidence adduced, and that those of the owners of the "St. Charles," are not well founded in law. It is now ordered that the said exceptions be, and they are hereby overruled and dismissed.

On consideration of the amendment asked by Pooley, Nicol & Co., for the allowance of $900 00, for raising, saving, and towing the Schooner "Ella," the Court being satisfied, from the testimony adduced on the trial, that this is a legitimate part of the damages recoverable by said libellants, it is ordered that the Admiralty

Commissioner's Report be amended, by allowing said sum of nine hundred dollars, in addition to the amount of $2,914 43 damages, allowed in said report. And now, considering the law and the evidence, and in furtherance of the opinion and judgment of the Court, heretofore rendered on the merits of these cases; and it appearing of record, that the Steamer "St. Charles," on which the libellants had a special lien and privilege for the satisfaction of the damages by them sustained, is herein represented by a bond or Admiralty stipulation, dated April 9th, 1853, and executed by Robert Geddes, part owner and agent of the other owners of said boat, making up the firm of J. L. Day and Co., as principal, and by Sophronious Twichell, as surety, jointly and severally in favor of E. G. Rogers & Co. and others, libellants in suit, No. 6852, and by another Bond or Admiralty stipulation, dated May 24th, 1853, and executed by R. Geddes, representing the said J. L. Day & Co., as principal, and by Robert Geddes individually, as surety, jointly and severally in favor of J. Hurley & Co., and Pooley, Nicol & Co., libellants in 6872. It is ordered, adjudged, and decreed, that there be judgment against the said principals and sureties, according *there be judgment against the said principals and sureties, according* to their respective liabilities, and jointly and severally in favor of E. G. Rogers & Co., for 3,062$\frac{66}{100}$ dollars; of Brooks and Randolph, for 836$\frac{96}{100}$ dollars; of John Hurley & Co., for 13,689$\frac{18}{100}$ dollars, equal to 5,267$\frac{66}{100}$ dollars, value of cargo of Schooner "Ella," less 647$\frac{11}{100}$ dollars nett amount of sale of damaged cargo, making four thousand six hundred and twenty $\frac{14}{100}$ dollars, in favor of the three firms, or their assigns jointly, with five per cent. interest thereon, from the 5th day of February, 1853, until paid, and in favor of Pooley, Nicol & Co., or assigns, for the full sum of 2,869$\frac{45}{100}$ dollars damages and expenses, and $945 00 demurrage, making the sum of three thousand eight hundred and fourteen $\frac{45}{100}$ dollars, in favor of the said owners of the Schooner "Ella," with five per cent. interest therein, from the fifth day of February, A. D. 1853; and *interest thereon, from the fifth day of February, A. D.* 1853, *and* costs of suit, to be taxed by the clerk.

Transcript. (From the Minutes.) May Term, 1854; Stated Sessions; Thursday, May 18th, 1854.

The Court met at 10 A. M. Present, Hon. T. H. McCaleb.

In Admiralty.

E. G. ROGERS & Co. et al., and JOHN HURLEY & Co. et al., v. The STEAMER "ST. CHARLES." — 6852. 6872.

Motion and order of appeal for claimants.

On motion of Messrs Clarke and Bayne, proctors for the claimants, and on their suggesting that said parties are aggrieved by the

decree rendered against them, herein on the 11th instant, and desire to appeal therefrom. It is ordered by the Court, that on said claimants furnishing appeal bonds, in the sum of $5,700 00 (6852), and $7,700 00 (6872), in favor of the respective libellants in these causes, they be allowed an appeal from the decree of this Court, returnable to the next term of the Circuit Court of the United States, for this District.

Transcript.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMER "ST. CHARLES."

Claimants' appeal bond of $5,700 00 (*in* 6852). Filed May 22d, 1854.

Know all men by these presents, that we, James L. Day of Norwich, Conn., Abraham Wolff of Mobile, Alabama, John Geddes of Cincinnati, Ohio, John Grant of Pascagoula, Mississippi, Roger A. Hiern and Robert Geddes of New Orleans, owners of the Steamer "St. Charles," all herein appearing by the said Robert Geddes, as principals, and Sophronious Twichell of New Orleans also as principal, and T. C. Twichell & Co. and O. Curry of New Orleans as sureties, are held and firmly bound, jointly and severally, unto G. G. Rogers and L. F. Rogers, forming the firm of E. G. Rogers & Co. of New Orleans, in the sum of four thousand five hundred dollars; and in like manner unto J. R. Brooks and F. G. Randolph, forming the firm of Brooks and Randolph of New Orleans, in the sum of twelve hundred dollars, making, in all, in the sum of five thousand seven hundred dollars, lawful money of the United States of America, to be paid to the said E. G. Rogers & Co. and the said Brooks and Randolph, in their respective interests, their respective heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated the 22d day of May, in the year of our Lord 1854.

Whereas the said James L. Day & Co., owners of the Steamer "St. Charles," claimants and respondents in a suit in admiralty in the District Court of the United States for the Eastern District of Louisiana, entitled: E. G. Rogers & Co. and others *v.* the Steamer "St. Charles," and numbered 6852 on the Docket of said Court, have this day moved for in the Honorable the District Court of the United States, holding session in and for the Eastern District of Louisiana, and obtained an appeal from the decree of said District Court in said cause, rendered on the eleventh day of May, A. D.

1854, said appeal returnable to the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana.

Now, the condition of the above obligation is that we, the above bounden owners of the Steamer "St. Charles," and Sophronious Twichell, their surety on the bond heretofore executed, and T. C. Twichell & Co. and O. Curry of New Orleans, their sureties hereon, will well and truly pay to the said E. G. Rogers & Co. and others, and Brooks & Randolph, libellants in said cause and appellees in said appeal, all such damages, costs, and expenses, as they may recover against us in case it should be decided that the said order of appeal was wrongfully obtained.

(Signed)	R. GEDDES,	[SEAL.]
(Signed)	SOPHRONIOUS TWICHELL,	[SEAL.]
(Signed)	T. C. TWICHELL,	[SEAL.]
(Signed)	O. CURRY.	[SEAL.]

Signed, sealed, and delivered, in the presence of
(Signed) T. L. BAYNE.

Transcript.

ROGERS & Co. et al.,
and HURLEY & Co. et al.,
v.
The STEAMBOAT "ST. CHARLES."

Claimants' appeal bond of $7,700 00 (*in* 6872). Filed May 22d, 1854.

Know all men by these presents, that we, James L. Day of Norwich, Conn.; Abraham Wolff of Mobile, Alabama; John Geddes of Cincinnati, Ohio; John Grant of Pascagoula, Mississippi; Roger A. Hiern and Robert Geddes of New Orleans, owners of the Steamer "St. Charles," all herein appearing by the said Robert Geddes as principals, and T. C. Twichell & Co. and O. Curry of New Orleans as sureties, are held and firmly bound jointly and severally unto John Hurley & Co. or Thomas Sullivan of New Orleans, in the sum of two thousand dollars; and in like manner unto Pooley, Nicol & Co., also of New Orleans, in the sum of five thousand seven hundred ($7,700 00) dollars lawful money of the United States of America, to be paid to the said John Hurley & Co. and Pooley, Nicol & Co., according to their respective interests, their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the twenty-second day of May, in the year of our Lord eighteen hundred and fifty-four. Whereas the said James L. Day and others, owners of the Steamer "St. Charles,"

claimants and respondents in a suit in admiralty in the District Court of the United States for the Eastern District of Louisiana, entitled: John Hurley & Co. and others *v.* the Steamer "St. Charles," and numbered 6872 on the Docket of said Court, have moved for in the Honorable the District Court of the United States in and for the Eastern District of Louisiana, and obtained an appeal from the decree of said District Court in said cause, rendered on the eleventh day of May, A. D. 1854, said appeal returnable to the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana.

Now the condition of the above obligation is, that we, the above bounden owners of the Steamer "St. Charles," and R. Geddes and T. C. Twichell & Co. and O. Curry, their sureties hereon, will well and truly pay to the said John Hurley & Co. and others, Pooley, Nicol & Co., libellants in said cause and appellees in said appeal, all such damages, costs, and expenses, as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed)	R. GEDDES,	[SEAL.]
(Signed)	T. C. TWICHELL & CO.	[SEAL.]
(Signed)	O. CURRY.	[SEAL.]

Signed, sealed, and delivered, in the presence of
(Signed) T. L. BAYNE.

Transcript from the Minutes. May Term, 1854; Stated Sessions; Monday, May 22d, 1854.

The Court met at 10 A.M. Present, Hon. T. H. McCaleb.
In Admiralty.

POOLEY, NICOL & Co.,
Owners of SCHOONER "ELLA,"
v.
STEAMBOAT "ST. CHARLES."

Motion and Order of Appeal for Lib'ts.

On motion of Thos. Hunton, Esq., Proctor, and J. A. Maybin, Esq., of counsel for the libellants, and on suggesting that said libellants are aggrieved by so much of the decree of the Court, rendered in this cause, on the 11th inst., as rejects their claim of 12 to $1500 for damages done, and repairs caused by the collision to the bottom of underworks of said schooner,

It is now ordered by the Court, that on said libellants furnishing an appeal bond in the sum of $300, to cover costs and expenses, with good and solvent security, they have and be allowed an appeal from such portion of the decree of this Court, returnable to the Circuit Court of the United States for this District, at its next term.

Transcript.

ROGERS & Co. et al.,
and HURLEY & Co. et. al.,
v.
The STEAMER "ST. CHARLES."

Appeal Bond of Pooley, Nicol & Co., for $300 00. *Filed May 23d,* 1854.

Know all men by these presents, that we, Pooley, Nicol & Co., owners of the Schr. "Ella," as principals (of New Orleans), and Thomas Sloo, also of New Orleans, as surety, are held and firmly bound, jointly and severally, unto James L. Day & Co., owners of the Steamer "St. Charles," in the sum of three hundred dollars, lawful money of the United States of America, to be paid to the said owners of the Steamer "St. Charles," their heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the twenty-third day of May, in the year of our Lord eighteen hundred and fifty-four.

Whereas, the said Pooley, Nicol & Co., owners of the said Schr. "Ella," and libellants against Steamer "St. Charles," in a suit in Admiralty, instituted in the District Court of the United States, for the Eastern District of Louisiana, and numbered 6872 on the docket, have this day moved for, in the honorable the Dist. Court of the United States, in and for the Eastern District of Louisiana, and obtained an appeal from so much of the decree of said Court, in said cause, as disallows the claim of said libellants to a sum of $1500 or thereabouts, more or less, for necessary repairs to the underworks of said schooner, caused by her collision with the said Steamer "St. Charles."

Now, the condition of the above obligation is, that we, the above bounden Pooley, Nicol & Co., and Thomas Sloo, surety herein, will well and truly pay to the said owners of the Steamer "St. Charles," the claimants in said suit, all such costs and expenses as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) POOLEY, NICOL & CO., [SEAL.]
(Signed) THOMAS SLOO. [SEAL.]

Signed, sealed, and delivered, in the presence of
(Signed) J. OLIVER BULLEN.

Finis.

United States of America, Eastern District of La. United States District Court.

I, N. R. Jennings, Clerk of said Court, certify that the foregoing 124 pages of manuscript, &c., including the diagram A, between pages 44 and 45, contain and form a true, correct, and complete transcript of all the pleadings, process, proceedings, documents, and other matters on file and of record in two certain consolidated causes in Admiralty, wherein, in the one, E. G. Rogers & Co., and Brooks and Randolph (No. 6852), and in the other, John Hurley & Co., and Pooley, Nicol & Co. (No. 6872), are libellants, and in both, the owners and surety of the Steamer "St. Charles," libelled, are claimants and respondents, Nos. 6852 and 6872 of the General Docket of said Court.

[SEAL.] In testimony whereof, I hereto set my hand, and affix the seal of said Court, at New Orleans, this twenty-third day of October, A. D. 1854, and 79th year of the Independence of the United States of America.

N. R. JENNINGS,
Clerk.

By ROBT. N. LUSHER,
Dy. Clerk of sd. Court.

Proceedings in Circuit Court.

E. L. ROGERS & Co. et als.,
v.
STEAMER "ST. CHARLES."
J. L. DAY & Co., Claimants. } 2383.

On Appeal. Nov. Term, 1854.

NEW ORLEANS, Wednesday, 15 Nov., 1854.

Present, Hon. J. A. Campbell, Presiding Judge.

This cause came on to be heard, and was argued by Messrs. Singleton, Maybin, Bayne, and Clarke, and was thereupon submitted to the Court, and taken under advisement.

Testimony of Ellsworth Allen.

ROGERS et als.
v.
STEAMER "ST. CHARLES." }

Ellsworth Allen being sworn, says, that I have been about twenty years engaged as an officer in navigating waters between Mobile and New Orleans, and for five or six years engaged as Captain of

a steamer; I am not in any manner connected with the mail line now between New Orleans and Mobile; I have examined the diagram attached to the testimony of Anthony Tyson, and I find the same correct as descriptive of the course between New Orleans and Mobile; I have known said Anthony Tyson for ten or twelve years, and he is regarded as one of the very best pilots on the lake.

I recognize on the diagram attached to his testimony, now presented to me, the several points marked out on said diagram, and I find them all correct; they, with the relative distances of the several places, bearings of lights, &c., are correct.

I am well acquainted with the course for steamers between New Orleans and Mobile; the course as marked out on the diagram heretofore presented, is correct.

Pass Marienne, from the light ship out eastward, is about five or six miles long; the channel is very narrow at the light ship; I should say about four hundred yards, and varies in width as you go eastward, enlarging as you go more and more eastward; the whole channel is very much alike; there is nothing in any one part rendering it more peculiarly a harbor than another; there are two or three small shell banks visible at low water; I saw the Schooner Ella after she was sunk; I succeeded Mr. Jones as pilot of the Steamer St. Charles, a few days after the collision, and saw the masts of the Schooner Ella as she lay; she was lying directly in the course of the mail steamer, and I took her bearings in order to avoid her; I saw the masts three or four times as we passed previous to her being raised; the water is from nine to twelve feet deep where the collision occurred; the channel, for extreme deep water at this point, is from four to six hundred yards; as an officer of the Steamer St. Charles shortly after the collision, I am acquainted with her speed, and the propelling force of partial quantities of steam upon her.

With one hundred and twenty-five pounds of steam to the square inch, the St. Charles would run at from seven to nine miles per hour; that is not her usual quantity of steam; she would not be propelled fast with that quantity of steam. When I was on the St. Charles, we frequently carried two hundred pounds of steam to the square-inch, she would move with that quantity, from ten to twelve miles per hour. The Steamer St. Charles and other steamers, will average about ten miles per hour in their voyages from New Orleans to Mobile; schooners and mail vessels running between New Orleans and Mobile, anchor almost anywhere in the lake; when they apprehend heavy weather, they may get nearer under the islands. The general course for vessels, from New Orleans to Pensacola, is not on the line where the Ella lay; the usual course is through the South Pass, leaving Cat Island to the left, going east; but when there is boisterous and very heavy weather, vessels sometimes go in by the light ship, and along the line where the collision occurred.

All prudent officers of schooners or small vessels avoid anchoring

in the line of the steamers' course. Those acquainted with the navigation of the lake; know the course of the steamers. If any circumstance requires them to anchor in the route for the steamers, they usually appoint a man specially to watch, put out a signal light, and frequently have a torch waived in order to give notice of their locality. A small schooner, upon the approach of any steamer, laying at anchor with its two naked masts, cannot be seen, no matter what the degree of vigilance may be in a night ordinarily dark, without it has a light; there is much greater difficulty in seeing this, than in seeing a ship or vessel with cross timbers, spars, &c.

It is usual for all vessels coming to anchor, to have a light out.

Cross-examined.

I was not on the Steamer St. Charles at the time of the collision; I was on the Steamer Georgia, running from N. O. to Montgomery, Ala.; I do not recollect how long after the collision it was before I succeeded Mr. Janes, as pilot, but it was long enough to allow me to pass the schooner three or four times before she was raised.

Cat Island would afford some protection for vessels out; this would depend upon the course of the wind, when near the vessel drew up to the island. It was from three to five miles in distance from the light ship to the Schooner Ella. In passing the Ella, we passed to the north. I was specially guarded, because I was informed that the Ella was in the usual track of the steamer, and I therefore placed the St. Charles north of where the Ella lay (the witness makes this explanation to his answer above, to wit: that he passed to the north, the channel is wider, say one hundred yards wider at the point where the Ella lay, than at the light ship. The Steamer St. Charles was going from New Orleans to Mobile, when I saw the Ella; we always passed her at night, in going east ten or eleven o'clock at night, and in coming from Mobile to New Orleans about midnight.

The first time that I saw the Schooner Ella, I took her bearings from the light at Cat Island; my only object in taking these bearings, was to avoid her in the trip to and from New Orleans; I took the bearings by the compass, when the masts came within range between the steamer and Cat Island; I was on duty as pilot at the time. The steamer was in motion at the time the bearings were taken. I never took the bearing from any stationary point, nor with reference to any other point than Cat Island light. In an ordinary dark night, I don't think that schooner like the Ella, with her naked masts without lights, could be seen by persons on a steamer, until they were immediately upon her.

(Signed) ELLSWORTH ALLEN.

Sworn to and subscribed before me, this 29th day of June, 1854.

C. V. JONTY,
Justice of the Peace.

Testimony by consent, in the several cases against the Steamer St. Charles, on appeal before Circuit Court, U. S.

WOLFE & SINGLETON,
For Libellants.

J. A. MAYBIN.

June 29th, 1854.

Opinion of the Court.

By Hon. J. A. Campbell.

JOHN HURLEY & Co., and
POOLEY, NICOL & Co.,
v.
STEAMER ST. CHARLES.

In the Circuit Court of the U. S., at New Orleans. On Appeal.

These libels were filed by the owners and freighters of the Schooner Ella, in a cause of collision with the Steamer St. Charles, in February, 1853, while she lay at anchor in Lake Borgne, between New Orleans and Pass Christian.

The material averments of the libel are, that the Ella was anchored at a safe and proper place, with an anchor watch set, a light out in the forerigging, about eight feet above the rail, and every other precaution usual for the security of the vessel, had been taken. That the watchman hailed the St. Charles as she approached, but his cries were disregarded, and she came on with a full head of steam against the Ella, sinking her, and destroying the cargo. The time of the occurrence is charged to be at half past eleven o'clock P. M., and that the night was dark and rainy.

The answers admit the collision at the time and place mentioned, the character of the night, and that the Ellen was at anchor; but denies that there was a light in the forerigging, on the deck, or elsewhere on the Ella, so as to be visible, and affirms, that it is usual and necessary for vessels in the lake, to show a light under such circumstances, and that the collision is attributable to the fact, that the Ella was not seen until it was too late to avoid her.

It will be perceived that the issue in the pleadings is confined to the allegation respecting the light, and whether the Ella had taken the usual and proper precautions to avoid peril. But in the evidence and the argument, a further objection is taken, that the St. Charles had deviated from the usual steamboat track, and was running at an unusual rate of speed.

The libellants establish, that the Ella was provided with a proper lamp. That her master, early in the evening, had directed that it should be placed in the forerigging, and kept bright. That this order was complied with by the mate, up to the hour of ten o'clock P. M., when his watch terminated. That this light was visible for

one or two miles, or more, until the hour of 11 P. M. The officers of the Caledonia, Zaline, and Ella, concur in this statement. The evidence of the condition of the light after this, is not so satisfactory on the part of the libellants. Proctor, the watchman of the Caledonia, says, I could not see the light of the Ella without getting upon our deck head, unless I was aft. I did not see the light after eleven o'clock because I was not aft, nor did I get on the deck load after that hour. He afterwards says, "At the time of the collision, I was standing aft; I saw the steamer before the collision, from the time she passed till she struck the Ella; it could not have been more than 15 minutes. I knew nothing of the accident till next morning, &c.

This evidence may not prove that the light was down at the time of collision, but it cannot be relied on to prove that it was visible at that hour. The only witness who testifies on this subject for the libellants is Brown, the watchman of the Ella.

His statements is, "I heard the St. Charles a few minutes before I saw her; when I first saw, she was at least 200 yards distant. My attention was directed towards her by the noise she made. I had the lamp down just before I heard her; I had taken it down to wipe the glass, to make it shine brighter; after I had wiped it, I put it on top of the cook-house. I put it there so it might shine better. It would show more light there than in the forerigging behind the shrouds. It remained there till the St. Charles run into us. I hailed them long before she ran into us. It took me but a few minutes to take the lamp down, wipe, and place it on the cook-house." On his cross-examination he says, "I had the lamp down wiping it a few seconds before I heard the St. Charles.

It will be perceived that this account of the situation of the light differs from the allegation of the libel, and the recital of facts in the protest.

The captain of the Ella, says he found the lamp on the cook-house, or as it is put in his cross-examination, "in the cook-house."

Upon the St. Charles, there were five persons on duty, who have given important testimony on this subject. The mate, pilot, engineer, helmsman, and watchman. These witnesses say they were engaged at their respective duties, and were attentive; that it is usual for vessels on the lake to hang out a light, and that the night was dark and misty, and they could not see a vessel ahead, without the assistance of one. In this statement of the usage, and the condition of the night, they are fully supported. The mate of the Ella says, that when he left his watch at 10 o'clock, the Ella could not have been seen 10 or 15 yards without one, and all agree that lights for several miles might be seen. The officers of the St. Charles agree that there was no light visible on the Ella. That she was first seen from the reflection of the fires of the St. Charles, when it was too late to arrest the progress of the boat. That this was attempted, is proved by them, and by Brown, the watchman of the Ella.

They do not admit that they heard any hail from the Ella, and it is clear that they were made after the accident became inevitable. The seaman who heard them, and rushed on the deck naked, had only time to reach the deck when it took place.

From an examination of the testimony, I am forced to the conclusion that the "Ella" did not carry at the time when measures for avoiding her should have been taken, an efficient light, and that the accident was occasioned in consequence of its absence. The question arises was a light necessary under the circumstances? In reference to this, the learned Judge of the admiralty in Great Britain observes "that no question has been more mooted and left more unsettled than this—whether it is the duty of a sailing vessel at night to show a light? Beyond all doubt it has been determined there is no such general obligation; at the same time, there have been occasions on which, for the sake of avoiding a misfortune which was in all human probability likely to occur, it became the duty of a vessel to show a light." *Osmonli*, 7; *Notes of Cases*, 507.

In the case of the Southern Belle at the last term I collected the cases, and decided in that case the circumstances required such a precaution on the part of the injured vessel.

In the present case the evidence upon the subject of the custom of navigation on the lake is in a very satisfactory state.

The master of the "Ella" testifies to his own habit. There were lights visible on board several of the vessels at anchor in the vicinity of this. The steamer was enabled to pass the "Caledonia" a short distance off in safety because of her attention to this safeguard, and the witnesses swear it is an unvariable custom for vessels on the lake to observe this rule.

I shall be disinclined to exonerate any vessel which fails to observe it, in the navigation of the lake, from responsibility where its absence has contributed to a misadventure.

The evidence does not satisfy me that the "St. Charles" was to blame for a deviation from the track of steamboats, or that her rate of speed was unusual or excessive. The lake was open, and so far as she could tell unobstructed, and her officers are not censurable for adopting one course in preference to another, and the evidence is not clear but what she was running in her accustomed track.

The pilot states that the steamer was running at the rate of eight or nine knots an hour, and the engineer says that the usual quantity of steam was not used—and assuming that she left New Orleans at five o'clock P. M. this account is confirmed.

Upon the whole case, my conclusion is that the collision was due to the removal of the light by the watchman Brown from its usual and proper place, and that the "St. Charles" is not chargeable with fault.

Decree reversed and libels dismissed.

Decree: April Term, 1855.

NEW ORLEANS, Monday, 23 April, 1855.

Present, Hon. J. A. Campbell, Presiding Judge.

E. L. ROGERS & Co. et als.,
Appellees,
v.
STEAMER "ST. CHARLES,"
J. L. DAY & Co. claimants and appellants.
No. 2383.

This cause came on to be heard at the last term of the Court, on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof it is now ordered and adjudged that the decree of the District Court be reversed, and that the libels herein be dismissed with costs.

Decree rendered 23 April, 1855; signed 30 April, 1855.

J. A. CAMPBELL,
Asso. Justice Supreme Court of the U. S.

Minutes; April Term, 1855.

NEW ORLEANS, 2d May, A. D. 1855.

Present: Hon. J. A. Campbell, Presiding Judge.

E. L. ROGERS & Co. et als.
v.
STEAMER "ST. CHARLES,"
J. L. DAY, claimant.
2383.

On motion of J. A. Maybin, Esq. of counsel for John Hurley & Co. and for Pooley, Nicol & Co., parties libellants herein, and on suggesting to the Court that the said libellants are aggrieved by the decree herein rendered against them on the 23d of April last, and are desirous to appeal therefrom, it is ordered that an appeal be allowed, returnable to the next term of the Supreme Court of the United States, and that the same operate as a supersedeas upon libellants giving bond conditioned according to law with good and solvent security thereon in the penal sum of five hundred dollars.

Appeal Bond. Filed 4 May, 1855.

Know all men by these presents, that we, Thomas Sullivan, trading under the style and firm of John Hurley & Co., and we, Pooley, Nicol & Co. as principals, and I, Thomas Sloo as security, are held and firmly bound jointly and severally unto James L. Day of Norwich, Connecticut; Abram Wolfe of Mobile, Alabama; John Geddes

of Cincinnati, Ohio; John Grant of Pascagoula, Mississippi; Roger A. Heirne and Robert Geddes of New Orleans, in the State of Louisiana, claimants of the Steamer "St. Charles," in the sum of five hundred dollars lawful money of the United States of America, to be paid to the said claimants of the said Steamer "St. Charles, their heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the third day of May, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, the said John Hurley & Co., and the said Pooley, Nicol & Co., have this day presented a petition to the Hon. the Circuit Court of the United States, for the Fifth Circuit, holding sessions in and for the Eastern District of Louisiana, praying for an appeal in the Supreme Court of the United States, from a judgment or decree of the said Circuit Court of the United States, for the Eastern District of Louisiana, rendered on the 23d April, 1855, on an appeal from the District Court of the United States, for the Eastern District of Louisiana, and reversing the decree of the said District Court, and dismissing the libel of the said John Hurley & Co., and Pooley, Nicol & Co. Now, the condition of the above obligation is, that we, the above bounden John Hurley & Co., and Pooley, Nicol & Co., shall prosecute our appeal to effect, and shall satisfy whatever judgment or decree may be rendered against us, and will well and truly pay to the said claimants of the said Steamer St. Charles, the respondents and claimants in said libel, all damages and costs, if we fail to make our said appeal good.

JOHN HURLEY & CO., [SEAL.]
POOLEY, NICOL & CO., [SEAL.]
THOMAS SLOO. [SEAL.

Signed, sealed and delivered, in presence of
JAS. EDWARDS.

Approved.

J. A. CAMPBELL,
Associate Justice, &c.

Petition for Appeal. Filed 3d May, 1855.

E. G. ROGERS & Co.,
and BROOKS & RANDOLPH,
v.
STEAMER ST. CHARLES.

To the Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

The petition of appeal of the libellants, E. G. Rogers & Co., and Brooks & Randolph, owners of the cargo, with respect showeth:

That a decree was lately rendered in this Hon. Court, bearing date the day of April, 1855, in a certain cause of admiralty and maritime jurisdiction, pending in this Hon. Court, wherein E. G. Rogers & Co., and Brooks & Randolph, and others are libellants, and James L. Day and others, are claimants, of the Steamer St. Charles, her tackle, apparel, and furniture, and defendants, whereby it was ordered, adjudged, and decreed, that the decree lately rendered by the United States District Court, for the Eastern District of Louisiana, be reversed, and a decree entered in favor of the said claimants, ordering the said libel to be dismissed, which said decree these appellants are advised is erroneous, and ought to be reversed. Wherefore, these appellants pray, that they be allowed an appeal from the decree of this Court to the Supreme Court of the United States; that the said decree be reversed, and such other be made as shall be agreeable to equity and conscience, and that these appellants be restored to all things which he has lost by said decree.

WOLFE & SINGLETON,
Of Counsel for Appellants.

Minutes. April Term, 1855.

New Orleans, Thursday, 3d May, 1855.

Present, Hon. J. A. Campbell, Presiding Judge.

E. G. Rogers & Co.,
and Brooks & Randolph, Owners of cargo,
v.
Steamer St. Charles,
J. L. Day, Claimant.
} No. 2383.

On motion of Wolfe and Singleton, of counsel for libellants, E. G. Rogers & Co., and Brooks & Randolph, and on presenting and filing their petition, representing that they are aggrieved by the decree herein rendered against them, on the 23d of April last, and are desirous of appealing therefrom, it is ordered, that an appeal be allowed them, returnable to the next term of the Supreme Court of the United States, and that the same operate as a supersedeas on said libellants giving bond conditioned according to law, with good and solvent security thereon, in the penal sum of five hundred dollars.

United States of America. Circuit Court of the United States.
Fifth Circuit and Eastern District of Louisiana.

Clerk's Office.

I, John W. Gurley, Clerk of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, do hereby certify, that the foregoing 139 pages contain and form a full,